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ACCEPTANCE. See **BILLS AND NOTES**, 34. **CONTRACT**, 4, 5. **SUNDAY**, 6.
Where the acceptance by an attorney of an order drawn upon him by his client after the recovery of a verdict is conditioned upon the collection of the judgment, it is not binding if the verdict is set aside and a new verdict subsequently obtained for a smaller amount. *Rawson v. Beach*, 697.

ACCOUNT. See **DEBTOR AND CREDITOR**, 3. **EQUITY**, 15. **ERRORS AND APPEALS**, 15. **LIMITATIONS**, **STATUTE OF**, 2. **PARTNERSHIP**, 7.

ACKNOWLEDGMENT. See **EVIDENCE**, 5.

ACTION. See **ADMIRALTY**, 12. **ARBITRATION**, 1. **BILLS AND NOTES**, 13. **COVENANT**, 1, 3. **EASEMENT**, 2. **LANDLORD AND TENANT**, 1. **MASTER AND SERVANT**, 1. **PAUPER**.

1. Will not lie at law to recover money decreed to be paid in equity. *Boyle v. Schindle*, 273.

2. Payee may bring suit in his own name on an accepted order. *Bacon v. Bates*, 620.

3. The fact that the negotiability of the order is restricted, being for an uncertain amount, does not affect the payee's right to enforce it. *Id.*

4. Property owner in city cannot maintain action against a water company for special damage through a failure of the company to furnish water as required by its contract with the city. *Davis v. Clinton Waterworks Co.*, 550.

5. The fact that a railroad company in constructing its road has filled up an artificial ditch on the land of a third person, and thus turned back water upon plaintiff's premises, is no cause of action. *O'Connor v. The Fond du Lac, A. & P. Railroad Co.*, 550.

6. Where one pays money to an administrator for land, and takes timber therefrom, knowing that the administrator cannot convey title, he cannot, upon the refusal of some of the heirs to join in a conveyance, bring suit to recover his money without offering to rescind the contract, or surrender possession, or pay for the timber. *Hyslip v. French*, 624.

7. Cannot be maintained against a railroad upon a written contract signed by the trustees of the mortgage bondholders. *Chaffee v. Rutland Railroad Co.*, 807.

8. A court of chancery could charge upon the trust property the legitimate expenses incurred in managing it; but not even this upon the bondholders personally. *Id.*

9. Distinction between the powers of an agent and trustee. *Id.*

10. The plaintiff, being a stockholder in the defendant company, is charged with knowledge of the capacity in which the trustee was acting. *Id.*

ACTS OF CONGRESS.

1866, July 27.

See **REMOVAL OF CAUSES**, 7, 8.

1867, March 2.

See **REMOVAL OF CAUSES**, 7, 8.

1874, Revised Statutes.

Sect. 639.

See **REMOVAL OF CAUSES**, 1-7.

Sect. 649.

See **ERRORS AND APPEALS**, 4.

Sect. 700.

See **ERRORS AND APPEALS**, 5.

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See **UNITED STATES COURTS**, 6.

ACTS OF CONGRESS.

Sect. 858.	See EVIDENCE, 27.
Sect. 914.	See ERRORS AND APPEALS, 2.
Sect. 1004.	See ERRORS AND APPEALS, 1.
Sect. 1005.	See ERRORS AND APPEALS, 1.
Sect. 1012.	See ERRORS AND APPEALS, 14.
Sect. 4250.	See VESSEL, 1.
Sect. 4283.	See ADMIRALTY, 6.
1874, June 22.	See DEBTOR AND CREDITOR, 6
1875, March 3.	See REMOVAL OF CAUSES, 1-7.

ADMINISTRATOR. See EXECUTOR.

ADMIRALTY. See ERRORS AND APPEALS, 12, 21. VESSEL.

I. Collision.

1. Negligence on part of vessel entering harbor and colliding with vessel at anchor, will not be presumed but must be shown. *Shepherd v. The Clara*, 410.
2. Where injured vessel kept no watch on deck she cannot recover. *Id.*
3. Where a collision is caused by the negligence of one vessel, but the damage would not have been sustained but for the negligence of the other, the loss should be divided equally. *The Margaret*, 757.
4. The jurisdiction of courts of admiralty over suits in personam for damages by collision is not exclusive; but there is also a remedy at common law. *Schoonmaker v. Gilmore*, 71.
5. Steamer approaching sailing vessel must govern herself according to the latter's actual and not probable course, and it is negligence to go so close that a slight change in the latter's course, in a moment of seeming peril, will cause a collision. *Steamship Benefactor v. Mount*, 273.

II. Liability of Shipowners.

6. The 56th Admiralty Rule does not preclude a party from claiming, after the trial of the cause, the limitation of liability provided for by sect. 4283 Revised Statutes. *N. Y. & Wilmington S. S. Co. v. Mount*, 620.
7. But if such limitation is claimed after trial the matters adjudicated cannot be reopened or the due course of appeal prevented. *Id.*
8. Where the claim is made during the progress of the cause it is in the discretion of the court to require that evidence already taken shall be received and used in the limitation proceedings. *Id.*
9. The claim would be ineffectual as against a party if made after he had received satisfaction of his demand, but the omission to claim the limitation as to one does not preclude the owners from claiming it as to others suffering loss by the same collision. *Id.*
10. In certain cases of laches in making the claim, it ought not to be allowed except upon condition of compensating the other party for costs and expenses. *Id.*
11. The proper criterion of the owner's liability is the amount at which the vessel is appraised or sold in the admiralty proceedings, or if surrendered, her value at the time of surrender. *Id.*
12. Libel sustainable by father to recover for loss of services of minor son killed in a collision. *The Garland*, 742, and note.
13. Admiralty courts will enforce, by proceeding in rem, a right conferred by a state statute upon an administrator to recover damages for loss of life. *Id.*

III. Salvage.

14. The test whether services rendered by a pilot were salvage services is, whether the attendant risk was such that the pilot could not be reasonably expected to perform the services for pilotage reward. *Akerblom v. Price*, 814.

AGENT. See ACTION, 9. ATTORNEY, 7, 12. BILLS AND NOTES, 16. ESTOPPEL, 10. GUARANTY, 2.

1. When a person conducts a business requiring the services of a clerk and manager, there is a representation that the parties engaged in the performance of these services are his agents with necessary powers. *Lochte v. Gele*, 416.

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2. One giving exclusive credit to a disclosed agent cannot hold the principal. *Lochte v. Gele*, 416.
3. The manner of charging upon the books of a merchant furnishes *prima facie* evidence as to the placing of the credit. *Id.*
4. A travelling salesman has apparent authority to collect as well as sell, and payment to him is a good defence. *Putnam v. French*, 807.
5. Where an agent commingles the money of the principal with his own and purchases property, it belongs to the principal; but if he commingles his goods with those of his principal they are tenants in common as to his creditors. *Safford v. Gallup*, 808.
6. One appointed by a company to have charge of a store has no authority to give notes of the company to procure loans. *Perkins v. Boothby*, 274.
7. Principal liable for money knowingly retained by him, which was borrowed and applied for his benefit by his agent without authority. *Id.*
8. An agent for sale of land with general powers, may make sale on credit in accordance with a general custom. *Silverman v. Bullock*, 411.
9. Where such an agent takes notes to himself for the price secured by mortgage and trust deeds which he puts on record, the principal will be held to have notice thereof. *Id.*
10. As against a subsequent purchaser of such notes for value the principal cannot have the sale of the lots set aside even though fraudulent. *Id.*
11. The rule that a power to confess judgment must be strictly pursued, must not be applied so rigidly as to defeat the intention. *Keith v. Kellogg*, 207.
12. Where authority is without any limitation, and it may be lawfully done in two or more ways, it may be executed in either of the ways. *Id.*
13. Where by the whole instrument it appears to have been the intention to bind the principal, it will be his deed although signed by the agent in his own name. *Purinton v. Security Life Ins. Co.*, 808.
14. Where joint and several power is conferred upon the members of a firm, the execution of an instrument by one is valid. *Id.*
15. Where the declaration alleges an instrument to be the deed of the defendant, it must be so regarded upon demurrer, if it could be, legally, the deed of the defendant. *Id.*
16. Where after judgment against two persons it is discovered that they were acting as agents for themselves and a third person previously undisclosed, the judgment, though unsatisfied, is a bar to a recovery against such third person. *Kendall v. Hamilton*, 516, and note.

ALIMONY. See **HUSBAND AND WIFE**, 7.

AMENDMENT. See **REPLEVIN**, 7. **TRIAL**, 1.

1. Where the complaint for work and labor implied, but did not expressly allege, a written contract and the answer set up a special contract and alleged non-performance, an amendment of the complaint at the trial was not improperly allowed, and where the amendment was made orally, and not formally filed, but was treated as made, it is an effectual amendment to support a verdict and judgment. *Kretser v. Cary*, 757.
2. A complaint setting up a purely legal cause of action cannot be amended by setting up a cause of action in equity. *Carmichael v. Argard*, 553.
3. The right to make such amendment cannot be claimed on the ground of mistake where there was no mistake of facts but merely an erroneous belief of counsel as to the law. *Id.*
4. In the absence of anything to show that an order or judgment was different from that actually entered, no correction can be made by a *nunc pro tunc* entry at a subsequent term. *Fetters v. Baird*, 558.
5. The recital in an attachment sur judgment, that the judgment had been recovered in March instead of February, is a clerical error which may be amended. *Bank v. Wreckler*, 350.

ANNUITY. See **WILL**, 6.

APPORTIONMENT. See **WILL**, 6.

ARBITRATION. See **SALE**, 12.

1. The acts of an arbitrator are performed in a judicial capacity, and he cannot be held liable in a civil action for damages therefor. *Jones v. Brown*, 820.
2. A parol submission and award may be binding, but the agreement to arbitrate should be duly established. *Koon v. Hollingsworth*, 274.
3. Parol evidence admissible to show misconduct of arbitrators. *Bridgeport v. Eiseman*, 135.
4. Irregularities not so serious as to show corruption are covered by an agreement that the arbitrators might proceed informally. *Id.*
5. Excessive award not sufficient to prove corruption. *Id.*

ARSON. See **CRIMINAL LAW**, 25.**ASSAULT AND BATTERY.** See **TRESPASS**, 6.**ASSIGNMENT.** See **DEBTOR AND CREDITOR**, 23-25. **MAIL**, 1. **PARTNERSHIP**, 9.

A creditor cannot, without the consent of the debtor, assign part of his claim. *Beardslee v. Morgner*, 808.

ASSUMPSIT. See **BILLS AND NOTES**, 6. **EQUITY**, 5. **PARTNERSHIP**, 4. **TRUST**, 3.

1. Cannot be maintained to recover a sum of money promised to be loaned. *Conway v. Building Association*, 274.
2. Whether an action for breach of contract in not loaning the money, can be maintained *quere*. *Id.*
3. Where one calls a physician to render services to a member of his household, he is *prima facie* liable to pay the bill. *Hentig v. Kernke*, 550.
4. Does not lie for volunteered services rendered under circumstances which do not indicate expectation of reward. *Coe v. Wager*, 136.
5. One may waive trover and bring assumpsit for property appropriated by defendant, but he must show what property has been so used. *Id.*
6. Where mortgaged goods have been converted and sold, the mortgagee cannot bring assumpsit for the amount received. *Carpenter v. Graham*, 206.

ATTACHMENT. See **AMENDMENT**, 5. **DEBTOR AND CREDITOR**, 8. **GARNISHMENT**. **HUSBAND AND WIFE**, 23. **LANDLORD AND TENANT**, 9. **UNITED STATES COURTS**, 5.

1. Statute authorizing attachment on ground of intended removal of property out of the state, contemplates a permanent removal and not a temporary use of the property out of the state. *Wurder v. Thrilkeld*, 71.
2. When property has been conveyed by the defendant to the alleged trustee and not purchased by the trustee, any balance in his hands above the amount the defendant owed him, is attachable by creditors. *Barker v. Osborne*, 356.
3. Where it appears that at one time prior to the attachment the trustee held attachable funds, the burden is on him to show payment to the defendant before the attachment. *Id.*

ATTORNEY. See **BANKRUPTCY**, 4. **BILLS AND NOTES**, 2. **EQUITY**, 16, 18. **JUDGMENT**, 1.

1. Is entitled to taxable costs in his own suit. *State v. Berry*, 206.
2. Is responsible to third person for aid given to client beyond his professional duties. *Schalk v. Kingsley*, 207.
3. Court will not defeat lien of by carrying out a stipulation between the parties to set aside judgment. *Brainard v. Elwood*, 207.
4. Authority to appear before any court of record and confess judgment may be exercised before the clerk of the court either in term time or vacation. *Keith v. Kellogg*, 207.
5. When a party to a suit and appearing in his own behalf is entitled to the allowances made by the fee bill for his services, except a retaining fee. *Flaacke v. Mayor, &c.*, 261, and note.
6. Knowledge acquired while acting for one client will not affect another client. *Ford v. French*, 551.
7. The court has summary jurisdiction to compel the town agent of a solicitor to pay the client the amount of his debt received in an action. *Ex parte Edwards*, 758.
8. It is not only the right but the duty of a court to disbar on cause shown. *Stout v. Proctor*, 351.

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9. Conviction of infamous crime, sufficient ground for disbaring. *Matter of McGarthy*, 136.
10. A bar association cannot be recognised or control the prosecution in proceedings to disbar. *Id.*
11. Disbarred attorney cannot represent any person in court as attorney, agent or otherwise. *Cobb v. Judge of Supreme Court*, 411.
12. A party cannot appear in court by an agent who is not an attorney. *Id.*

AUCTIONEER

Neglect to pay over proceeds of sale is a breach of a bond conditioned that an auctioneer shall "well and faithfully perform all the duties of said office." *Tripp v. Barton*, 621.

BAIL. See **VESSEL**, 7, 14.

BAILMENT. See **CORPORATION**, 3. **WAREHOUSEMAN**, 2.

Where a sewing-machine lease gave the tenant the right to purchase by paying the full amount of the rent, but reserved to the lessor all property in the machine and the control thereof until such purchase. *Held*, that in case of default the lessor could dispossess the lessee. *Smith v. Lozo*, 212.

BANK. See **EXECUTORS AND ADMINISTRATORS**, 1. **NATIONAL BANK.** **NEGLIGENCE**, 1. **NEGOTIABLE INSTRUMENT**, 3.

BANKRUPTCY. See **DEBTOR AND CREDITOR**, 6. **NEGLIGENCE**, 8. **PARTNERSHIP**, 8.

I. Effect of Proceedings.

1. Where a judgment is rendered against a bankrupt in his own name, he will be allowed to prosecute a writ of error. *Hill v. Harding*, 274.
2. In such case, if the assignee is of opinion that any of the questions involved may affect the estate, he will be heard on such questions. *Id.*

II. Fraud.

3. An act of the debtor which allows judgment to be taken earlier than it could otherwise have been done, is a procuration. *Rodgers v. Palmer*, 351.
4. Reasonable cause to believe insolvency and knowledge of the fraud must be shown, but the knowledge of the creditor's attorney is his own knowledge. *Id.*

III. Discharge.

5. Validity of discharge cannot be contested in state court because of intentional omission of plaintiff's name from list of creditors. *Baily v. Corruthers*, 351.
6. Discharge does not relieve from debt to the United States. *Smith v. Hodson*, 136.
7. Debtor held liable for contribution to co-surety upon debt to government paid by co-surety after the discharge. *Id.*

BIGAMY. See **CRIMINAL LAW**, II.

BILL OF EXCEPTIONS.

1. Rule requiring presentation of, in five days, is not binding on the judge. *Hunnicut v. Peyton*, 72.
2. Taking writ of error before signing of the bill is not a waiver of the exceptions. *Id.*
3. Bill not invalid because dated and filed as of date subsequent to trial. *Id.*
4. To have a decision on the plea of *nul tiel* record reviewed, the bill of exceptions must set forth the record, the ruling of the court and the exception. *Bank v. Wreckler*, 351.
5. Where the error assigned is that the court erroneously charged that the evidence tended to show certain facts, the bill must contain the whole evidence. *Potter v. Bank*, 351.

BILLS AND NOTES. See **AGENT**, 6. **DURESS**, 1. **INFANT**, 6. **LIMITATIONS, STATUTE OF**, 4. **MORTGAGE**, 9. **NEW TRIAL**, 4. **PLEADING**, 2.

I. Form, Consideration, &c.

1. A note in the form, "I promise to pay," &c., signed by two or more persons is joint and several. *Dill v. White*, 551.

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2. Promissory note containing stipulation for attorney's fees loses its character as a note and becomes a mere contract. *First National Bank v. Jacobs*, 809.

3. The words "or order" are not necessary to make an instrument negotiable. *Fawcett v. National Life Ins. Co.*, 207.

4. A draft in which no time for payment is mentioned is payable on demand, notwithstanding that it calls for interest after maturity. *First Nat. Bank v. Price*, 72.

5. The addition "Vestryman Grace Church" to each signer's name does not make it the note of the corporation. *Tilden v. Barnard*, 412.

II. *Rights of Parties.* See *infra*, III.

6. Giving a promissory note for a debt does not discharge the debt, and assumpsit may be maintained therefor if the note be produced for cancellation. *Walsh v. Lennon*, 411.

7. When the maker of the note proves that it had its origin in fraud, the holder must prove that he received it before due, *bona fide* and for value; he need not, however, prove want of knowledge of the facts constituting the fraud, the burden being on defendant to show such knowledge. *Johnson v. McMurry*, 551.

8. Where the cashier of a bank is one of the makers and payees, the bank cannot take the note as a *bona fide* holder without notice. *Tilden v. Barnard*, 412.

9. A finding that a note was transferred before maturity for a valuable consideration, and that the transferee had no knowledge of the details of its origin, cannot be regarded as equivalent to a finding that he was a *bona fide* holder for value. *Id.*

10. In order to constitute misappropriation of accommodation paper, the misuse must be tainted with fraud. *Jackson v. Bank*, 136.

11. Where such paper is given to be used as collateral security for a new loan, it is not misappropriation to deposit it as security for an antecedent loan. *Id.*

12. Guarantor of note not entitled to notice of demand and refusal. *Singer Manufacturing Co. v. Hester*, 136.

13. Where a note has been materially altered, without fraudulent intent, the payee may recover upon proof of the original consideration. *Morrison v. Huggins*, 206.

14. A deposit by the maker of a note at maturity, of the money for its payment at the bank at which the note is payable, is a good defence to an action by the holder, who failed to present the note until after the insolvency of the bank. *Horan v. Lazier*, and note, 542.

15. *Bona fide* purchaser of promissory note secured by deed of trust, without notice of payments, is entitled to enforce the deed for the full amount. *Goodfellow v. Stillwell*, 809.

16. Where the deed of trust authorizes the trustee to receive payment, the purchaser will be deemed to have constituted the trustee his agent for that purpose, if he do not revoke the authority. *Id.*

III. *Endorsement, Acceptance, &c.* See *supra*, II.

17. Endorser admits that previous endorsements were duly made, and warrants the title and genuineness of the paper he transfers. *Fish v. First Nat. Bank*, 275.

18. One who receives negotiable paper need not look beyond the signature of the last endorser. *Id.*

19. Presumption as to liability of one who endorses a note to which he is not a party is that he is a guarantor, but this presumption may be rebutted. *Andrews v. Congar*, 328.

20. Plaintiff suing on guaranty is not bound to prove execution of note unless denied under oath. *Id.*

21. Review of decisions as to liability of a stranger to a note who endorses it before delivery. *Id.*, note, 331.

22. To hold a third party who irregularly endorses a promissory note, as

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joint maker, he must have participated in the creation of the note or shared in the consideration. *Hayden v. Weldon*, 698.

23. Endorsing the note before the payee imports only the contract of second endorsee. *Id.*

24. Where the undertaking of a third party is to further secure the payment of a debt already created between the regular parties to the note, it is within the Statute of Frauds, requiring a writing. *Id.*

25. Such an endorsement is not in itself authority to the holder of the note to write over it a contract of guaranty. *Id.*

26. A guaranty is not negotiable, nor does it become so by being endorsed upon negotiable paper. *Id.*

27. Endorser cannot escape liability to purchaser for value by showing that the endorsement was made merely to pass title, and under a verbal agreement that the words "without recourse" should be added. *Lewis v. Dunlap*, 487.

28. A defence by one who endorsed a note to which he was not a party that he endorsed it as guarantor only, and that there was a want of due diligence in pursuing the maker, is sufficient. *Withers v. Berry*, 487.

29. Note payable to maker's own order, and endorsed by him, becomes payable to bearer. *Bishop v. Rowe*, 352.

30. Where a stranger to such note, who has given the holder his obligation, to be holden as if he had endorsed it is obliged to pay it, he is entitled to it, and may sue on it in his own name. *Id.*

31. Accommodation endorser of note payable on demand with interest, is not liable as a joint maker and is entitled to notice of dishonor. *Sawyer v. Brownell*, 698.

32. Effect of endorsement in blank and right of endorsee to fill up and subsequently alter same. *Fawcett v. National Life Insurance Co.*, 207.

33. Endorsement by third person for collection does not destroy the negotiability of the note. *Id.*

34. Evidence is not admissible to change the meaning of the acceptance of a draft as apparent on its face. *Hunting v. Emmart*, 808.

BOND. See AUCTIONEER. MUNICIPAL BOND. SURETY, 7.

1. Bond of a town treasurer not executed till near the close of his term but ante-dated, binds his sureties for defaults during the year for which he was elected but not for prior defaults. *Town of Barnet v. Abbott*, 698.

2. When the bond was delivered it was sealed, but the sureties had never sealed it nor authorized any one to do so. *Held*, defectively executed. *Id.*

3. The ante-dating of the bond and the fact that it was not sealed at the time it was executed may be shown by parol. *Id.*

4. An official bond need not follow the words of the statute if it uses words of the same legal effect. *Tripp v. Barton*, 621.

BUILDING ASSOCIATION. See SURETY, 8.**BURDEN OF PROOF. See ATTACHMENT, 3. BILLS AND NOTES, 7. CONTRACT, 2. CRIMINAL LAW, 23, 24, 33. MASTER AND SERVANT, 4. NEGLIGENCE, 2, 5. PLEADING, 1. TAX, 10.****BURGLARY. See CRIMINAL LAW, III.****BURIAL LOT. See TRESPASS, 1.****CANAL.**

Must be maintained in such manner that it can be used with reasonable safety, but the company is not liable for an injury resulting from an unknown obstruction not discoverable with ordinary care. *Pennsylvania Canal Co. v. Burd*, 72.

CASES AFFIRMED, COMMENTED ON, OVERRULED, ETC.

Albro v. Jaquith, 4 Gray 99, overruled. *Osborne v. Morgan*, 399.

Anderson v. Dunn, 6 Wheat. 204, overruled. *Kilbourn v. Thompson*, 622.

Baddeley v. Baddeley, L. R., 9 Ch. Div. 113, observed upon. *In re Brewster's Estate*, 811.

Besch v. Frolich, 1 Ph. 172, followed. *Lyon v. Tweddell*, 813.

CASES AFFIRMED, COMMENTED ON, OVERRULED, etc.

- Boyes v. Bedale, 1 H. & M. 798, disapproved. *In re Goodman's Trusts*, 810.
 Buck v. Colbath, 3 Wall. 334, distinguished. *Hegman v. Covel*, 171.
 Byrne & Co. v. Leon Van Tienhoven & Co., 49 L. J. C. P. 316, followed.
Stevenson v. McLean, 16.
 Day v. Cummings, 19 Vt. 496, distinguished. *McDonald v. Smith*, 631.
 Douglass v. Howland, 24 Wend. 35, followed. *Ex parte Young*, 815.
 Duncan v. Gilbert, 5 Dutcher 521, approved. *Jackson v. The Bank*, 136.
 Freeman v. Howe, 24 How. 450, distinguished. *Hegman v. Covel*, 171.
 Fox v. Hawks, L. R., 13 Ch. Div. 822, observed upon. *In re Breton's Estate*, 811.
 Hoare v. Rennie, 5 H. & N. 19, followed. *Houch v. Muller*, 814.
 Hoover v. West, 91 U. S. 308, distinguished. *Rodgers v. Palmer*, 351.
 Humphry v. Pegnes, 16 Wall. 244, distinguished. *East Tennessee, V. & G. Railroad Co. v. Hamblen Co.*, 421.
 Jolly v. Rees, 15 C. B. (N. S.) 628, followed and approved. *Debenham v. Mellon*, 316.
 King v. Hoare, 13 M. & W. 494, followed and approved. *Kendall v. Hamilton*, 516.
 Lumley v. Gye, 2 E. & B. 216, discussed and followed. *Bowen v. Hall*, 578.
 Lynde v. Winnebago Co., 16 Wall. 6, distinguished. *Wells v. Board of Supervisors*, 213.
 Milroy v. Lord, 4 D. F. & J. 264, followed. *In re Breton's Estate*, 811.
 Morgan v. Louisiana, 93 U. S. 217, followed. *East Tennessee, V. & G. Railroad Co. v. Hamblen Co.*, 421.
 Newman v. Willetts, 52 Ill. 98, distinguished. *Bennett v. Stout*, 418.
 Nichols v. Eaton, 91 U. S. 716, distinguished. *McCleary v. Ellis*, 180.
 Norris v. Springer, 18 Me. 324, considered. *Smith v. Loomis*, 811.
 Sheldon v. South School District, 24 Conn. 88, commented on. *Seeley v. Westport*, 143.
 Vannever v. Bryant, 21 Wall. 43, distinguished. *Jifkins v. Sweetser*, 282.
 Waterbury Saving Bank v. Lawler, 46 Conn. 243, commented on. *Seeley v. Westport*, 143.

CAVEAT EMPTOR. See SHERIFF'S SALE.

CEMETERY LOT. See TRESPASS, 1.

CERTIORARI. See ERRORS AND APPEALS, 6.

CHARTER. See MUNICIPAL CORPORATION, 28, 29.

CHATTEL MORTGAGE. See MORTGAGE, I.

CITIZENSHIP. See U. S. COURTS, 8.

CLUB.

1. Decision of a club acting under its rules, will not be interfered with unless the rules are contrary to justice, or the decision is contrary to the rules, or there has been *mala fides*. *Dawkins v. Antrobus*, 809.

2. One of the rules of a club provided, that a general meeting might alter any of the standing rules affecting the general interests of the club, provided this was done with certain formalities and by a certain majority. *Held*, that a rule providing for the expulsion of members who should be guilty of conduct injurious to the interests of the club, was within the regulation. *Id.*

COLLATERAL SECURITY. See BILLS AND NOTES, 11. CORPORATION, 3. SURETY, 2. WAREHOUSEMAN, 5.

COLLISION. See ADMIRALTY, I.

COMMITTEE. See MUNICIPAL CORPORATION, 13, 14.

COMMON CARRIER. See CANAL. RAILROAD, 2, 11.

1. Is liable for loss by accidental fire of goods left with him to be forwarded. *Pittsburgh, C. & S. Railroad Co. v. Barrett*, 406.

2. But not, if anything remained to be done by the shipper before forwarding. *Id.*

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3. The assent of the shipper to conditions limiting such liability is binding, but will not be presumed if not clearly shown. *Pittsburgh C. & S. Railroad Co. v. Barrett*, 406.
4. The carrier will not be relieved by a custom known to the shipper, but not clearly assented to by him as a condition of the contract. *Id.*
5. Is responsible for injuries to passengers which might have been avoided by his exercise of extraordinary vigilance aided by the highest skill. *Pennsylvania Co. v. Roy*, 245.
6. Must provide vehicles adequate for the safe conveyance of passengers and is liable for the slightest negligence in that regard. *Id.*
7. A railroad company is liable for the negligence of the servants in a Pullman car forming part of the train. *Id.*
8. Evidence as to the poverty of the passenger or as to the number and ages of his children, *Held*, irrelevant. *Id.*
9. General rule as to the liability of common carriers of passengers. *Id.*, note.
10. Passenger riding in express car cannot recover if his position contributed to the injury. *Kentucky Central Railroad Co. v. Thomas*, 126.
11. The conductor is not bound to know that a passenger is in the express car. *Id.*
12. Railroad company liable for omission to use Westinghouse brakes. *Id.*
13. As to property retained in a passenger's own custody a ferryman is liable only for defects in the boat or want of care in its management. *Dudley v. Camden & Phila. Ferry Co.*, 210.
14. If he carries the property gratuitously he is only liable for gross negligence. *Id.*
15. Log driving and booming companies are not subject to the liabilities of common carriers. *Mann v. White River L. & B. Co.*, 734, and note.

CONDITIONAL SALE. See BAILMENT SALE, 1, 4, 6.

CONFEDERATE STATES. See CONSTITUTIONAL LAW, 11. ESTOPPEL, 5.

CONFLICT OF LAWS. See EVIDENCE, 28. HUSBAND AND WIFE, 2-5.

1. Suit cannot be maintained against a married woman on her note in a state where she was legally incapable of making a note, although the note in suit was made in a state where she had such legal capacity. *Hayden v. Stone*, 621.
2. If in the state where suit is brought, service on the husband is necessary, a failure to make such service renders the action fatally defective. *Id.*
3. The proper law for determining kindred under the English Statute of Distributions is the international law adopted by the comity of states, and not the local law. *In re Goodman's Trusts*, 810.
4. THE LAW OF DOMICILE IN CONNECTION WITH THE RIGHT OF SUCCESSION TO BOTH PERSONAL AND REAL ESTATE, 705.

CONGRESS. See CONSTITUTIONAL LAW, 1. CONTEMPT, 1-4.

CONSTITUTIONAL LAW. See DAMAGES, 1. RAILROAD, 8. TAX, 7. UNITED STATES COURTS, 1-5.

I. Powers of Congress.

1. The exemption of members of Congress from liability for speech or debate extends to the report of members of a committee in favor of punishing a witness for contempt; their expression of opinion as to the contempt and their vote in favor of his imprisonment. *Kilbourn v. Thompson*, 621.
2. CONSTITUTIONAL FOUNDATION OF WAR CLAIMS FOR PROPERTY, 217.

II. Powers of State Legislatures.

3. A state may by legislation protect fish in non-navigable streams. *Wells v. Snover*, 75.
4. A statute making penal the use of nets in fishing, at particular times and in certain counties, is not unconstitutional. *Doughty v. Conover*, 75.
5. A statute adding to a prisoner's term the time spent by him in confinement for violation of prison rules is unconstitutional. *Gross v. Rice*, 275.

CONSTITUTIONAL LAW.

6. In an action by the prisoner against the warden for such imprisonment damages are recoverable, notwithstanding that the statute had never been declared unconstitutional. *Gross v. Rice*, 275.

7. Statute repealing an act limiting the time within which crimes shall be prosecuted is not an *ex post facto* law. *State v. Moore*, 72.

8. A statute which purports to authorize the prosecution of a person for an offence previously committed, and as to which all prosecution was already barred by statutes of limitation, is unconstitutional. *Moore v. State*, 621.

9. A statute which in imposing a tax on the sale of liquors discriminates against wine and beer imported from other states is unconstitutional, but cannot be avoided on this ground by one selling other liquors within its terms. *Tiernan v. Rinker*, 72.

10. Where the legislature has authorized the governor to enter into a contract with a person to work for a definite period, it cannot, by a repeal of the statute, prevent a recovery for the salary thereafter accruing under the contract. *Hall v. Wisconsin*, 137.

11. A stay law passed by a seceding state, and giving time until the cessation of the Ordinance of Secession, is void as impairing the obligation of contracts. *Daniels v. Tarney*, 412.

12. Statutes requiring judgments against a city to be registered with the controller before payment does not impede the collection thereof, and is not unconstitutional. *Louisiana v. New Orleans*, 412.

13. If the defect in a proceeding consists in doing or omitting something which the legislature might have made immaterial by prior law, it may be made immaterial by subsequent law. *Town of Fox v. Town of Kendall*, 275.

CONTEMPT. See ERRORS AND APPEALS, 23. MANDAMUS, 2.

1. The two houses of Congress do not possess the same general power of punishing for contempt, that is exercised by the houses of the English Parliament. *Kilbourn v. Thompson*, 622.

2. Whether a power of punishment for contempt exists, as necessary to their legislative functions, *quere?* *Id.*

3. No person can be punished for contumacy as a witness before either house, unless his testimony is required in a matter into which the house has jurisdiction to inquire. *Id.*

4. In a suit for false imprisonment, where the defendant justifies under the process of either house of Congress, the resolution of such house and the warrant of its speaker are not conclusive. *Id.*

5. CONTEMPT OF COURT, 81, 145, 217, 289, 361, 425.

CONTRACT. See CONSTITUTIONAL LAW, 10. CORPORATION, 11. EVIDENCE, 12. HUSBAND AND WIFE, 18, IV. OFFICE, 1. PUBLIC POLICY. RATIFICATION, 1. SALE. SUNDAY, 1, 9. WATERS AND WATERCOURSES, 2.

1. Revocation of offer must be communicated to the other party before he dispatches his acceptance. *Stevenson v. McLean*, 16, and note.

2. Where one is hired to work by the week, the burden of proof is upon him to show a change as to term of service. *State v. Tarnish Co.*, 699.

3. A contract by a father to give a farm after his death to his son in consideration of support during his life, will be enforced in favor of the son against the other children, and the fact that a will by which the father attempted to carry out the contract was void, will not affect the son's rights. *Hiatt v. Williams*, 552.

4. Where there is no privity of contract between defendants and plaintiff, and the whole right of the latter is based upon a conditional acceptance of an order, no right of action can arise if the condition is not performed. *Gill v. Weller*, 352.

5. A certain acceptance of an order construed to be conditional. *Id.*

6. There being both a town and village within the town by the name of Litchfield, a contract not to practice "within a radius of ten miles of Litchfield." *Held*, to mean within ten miles of the centre of the village. *Cook v. Johnson*, 266.

7. Such contract is not void for failure to fix a period within which the defendant was not to practice. *Id.*

CONTRACT.

8. Where such contract is reasonable when made, subsequent circumstances do not affect its operation. *Cook v. Johnson*, 266.

9. A contract to pay a certain sum per thousand for running logs and for floating a part of them into a stream, is not devisible, and in an action for its breach, the measure of recovery is the contract price less any damages from breach of any part of the contract. *Keystone L. & S. Manufacturing Co. v. Dole*, 412.

10. Where a contract is express, no provision can be implied. *Id.*

11. Failure to perform a contract to furnish water for floating logs is not excused by an accidental breaking of the dam, if the contract does not provide for accidents or if the dam can be repaired. *Id.*

12. In suit upon a contract to furnish stone enough to complete a bridge and its approaches, the question being whether certain work was part of the approaches, held, error to refuse an instruction that the jury should consider the condition of things at the time the contract was made, and not the condition as subsequently developed by the operations of nature. *Union Pacific Railroad Co. v. Clopper*, 488.

13. Held also error to refuse an instruction that the testimony of experts in bridge building was entitled to due weight as to whether certain work was part of the bridge. *Id.*

14. Money paid in part performance of an illegal contract not *malum in se*, can be recovered back if the other party has not performed the contract, and both parties have abandoned it before consummation. *Congress, &c., Spring Co. v. Knowlton*, 552.

15. This principle applied to a subscription to an illegal issue of stock in a corporation. *Id.*

CONVERSION. See TROVER.

CORPORATION. See BILLS AND NOTES, 5. CONTRACT, 15. INJUNCTION, 4. MUNICIPAL CORPORATION. RAILROAD. UNITED STATES COURTS, 8.

1. One may render himself liable as stockholder as well by his conduct as by formal subscription. *Griswold v. Seligman*, 413.

2. Where persons who held stock in escrow voted upon it; they were held as against creditors estopped from denying that they were stockholders. *Id.*

3. Where stock is held under a written contract as security for advances, it is not competent to show a verbal understanding that the bailees were to have the right to vote. *Id.*

4. In order to bind a subscriber to stock, it is not necessary that a certificate shall be issued to him. *Hawley v. Upton*, 413.

5. An organization given by charter the usual powers and privileges of a corporation, is liable as a corporation to any one suffering damages through a negligent performance of its duties. *Weymouth v. Penobscot Log Driving Co.*, 353.

6. Where the charter of a log-driving company provides that it "may drive all logs" in a certain stream, the power is permissive, but when the company accepts the privilege, a duty to drive the logs results. *Id.*

7. Whether the agents of a corporation have been negligent in performing their duties is a question for the jury. *Id.*

8. Where, through a failure to file a certificate, an association supposed to be incorporated proves not to be so, the members are bound to share *pro rata* the expenses incurred by the managers with a proportionate allowance in favor of full paid stock as against that not full paid. *Richardson v. Pitts*, 208.

9. Transferee of stock under a forged transfer, does not acquire a right against the company by estoppel by the mere fact of its registration of the transfer and issue of a certificate. *Simm v. Anglo-American Telegraph Co.*, 159.

10. Extent of corporation's liability for issuing certificate upon forged transfer. *Id. Note*, 168.

11. Equity will in many cases refuse relief to stockholder against unauthorized contract where suit has been delayed until the contract was executed, especially if plaintiff has, by his conduct misled others. *Terry v. Eagle Lock Co.*, 137.

CORPORATION.

12. Transfer of goods by insolvent corporation to two of its directors in payment of a debt due them, is not *per se* fraudulent. *Smith v. Speary*, 73.
13. What acts amount to a delivery of the goods. *Id.*
14. PREFERRED STOCK, 633.

COSTS. See ATTORNEY, 1, 5.

1. Are within the discretion of the court below, and a decree will not be disturbed for an improper direction as to them. *Dodge v. Stanhope*, 758.
2. Appearance fees should not be allowed on exceptions to an auditor's accounts, or other collateral proceedings upon petition. *Id.*
3. An assignee, suing in the name of his assignor, and failing, is liable for costs. *Davenport v. Elizabeth*, 699.
4. Where defendants sever in their answers, each one is allowed his costs, although they all employ the same solicitor. *Putnam v. Clark*, 758.
5. One sued in his official capacity as escheator cannot be made liable personally for costs. *Hansenstein v. Lynham*, 413.
6. Certain items of costs and their taxation considered. *Flaake v. Mayor*, &c., 261, and note.

COURTS. See CONTEMPT, 5. JUDGMENT, 2-3. JURISDICTION. NUISANCE, 4. REPLEVIN, 1, 2. U. S. COURTS.

1. Because a law gives a court exclusive jurisdiction in specified cases, it does not necessarily exclude it from all other jurisdiction. *Howard v. Lacroix*, 414.
2. Courts of limited authority can entertain no jurisdiction not conferred by the law creating them or by subsequent statute. *Id.*

COVENANT.

1. *Semble*, that the right of action for breach of warranty accrues when damage is suffered, and successive acts causing damage amount to successive breaches. *Post v. Campan*, 275.
2. An encumbrance is anything which burdens a title, and includes any interest which diminishes the value of the land while it is consistent with a conveyance in fee. *Id.*
3. The elements of a cause of action are—(1) a breach of duty; and (2) a damage resulting. *Id.*
4. A covenant runs with the land when its purpose is to give future protection to the title, but not when it simply protects against something immediately affecting the title and causing present damage. *Id.*

CRIMINAL LAW. See CONSTITUTIONAL LAW, 5, 7, 8. JUROR, 1-11.

I. Generally.

1. In a summary proceeding for a penalty, an exception to the statute must be shown to be inapplicable by proper averments. *Doughty v. Conover*, 73.
2. The conviction must contain sufficient of the evidence to show the legal propriety of the judgment. *Id.*
3. An indictment for murder charged in one count three defendants as principals and in another two as principals, and the third as accessory before the fact. *Held*, to be no misjoinder. *State v. Hamlin*, 137.
4. Even if a misjoinder, it could not be taken advantage of by motion in arrest of judgment or on error. *Id.*
5. It is not the right of the accused to be present at the examination of witnesses before the grand jury. *Id.*
6. A court cannot allow evidence as to the proceedings within the grand jury room; and the State's attorney has no right, by demurrer or in any other mode, to admit allegations in the plea as to such proceedings. *Id.*
7. In Indiana, criminal prosecutions can only be maintained for offences prescribed by statute, but courts resort to the common law for interpretation of the terms of the statute. *Indiana v. Burdette*, and note, 342.
8. The right of lot-owners to have a street maintained free from obstruction may be vindicated by indictment. *Id.*
9. A writ of error lies on a judgment quashing an indictment on demurrer. *State v. Hodges*, 759.
10. The offence of receiving stolen goods is, in Maryland, a misdemeanor

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and it is not necessary to allege in the indictment that the property was feloniously received, nor that the traverser received them for the purpose of converting them to his own use. *State v. Hodges*, 759.

11. It is not necessary that the receiving should be *lucri causa*. *Id.*

12. An indictment for receiving stolen goods, a common-law offence, should charge that the same were unlawfully received. *Id.*

13. Where one is charged with a common-law offence, the mere averment that it was done *contra pacem*, does not dispense with the necessity of setting out the circumstances. *Id.*

14. It is not error to permit an attorney assisting the state's attorney to make the opening statement to the jury. *State v. Stark*, 488.

15. While it is improper for a juror to ask advice of the court officer, and for such officer to communicate such inquiry to the prosecuting attorney, yet if the officer made no response and the defendant was not prejudiced, the conviction will not be set aside. *Id.*

16. In the absence of evidence of conspiracy between father and son, antecedent threats made by the son are inadmissible in evidence on the trial of an indictment for assault upon the father. *Id.*

17. Judgment upon conviction of an offence not capital, will not be reversed for an omission to enter of record the address of the judge asking the prisoner if he has anything to say why sentence should not be pronounced. *Id.*

18. Almanac admissible to show when the moon rose on a certain night, without proof of the character of the almanac, and although the time indicated was a prediction. *Munshower v. The State*, 699.

19. Admissions which tend to criminate a third party, are not within the rules of law that exclude confessions induced by promises. *State v. Carr*, 622.

20. Declarations of a party assaulted, made to persons who ran to his assistance, immediately after the assault but in the absence of the prisoner, are inadmissible. *State v. Pomeroy*, 623.

21. Where two offences are committed at the same place and time, under such circumstances as to constitute a continuous accomplishment of a common design, evidence of both is admissible upon a trial for one. *State v. Greenwade*, 552.

22. The refusal of a witness to answer, upon the ground that he may thereby criminate himself, cannot be used against him upon his subsequent trial for the same offence. *State v. Bailey*, 552.

23. The burden of proving insanity, by evidence which will reasonably satisfy the jury, rests on the defendant. *State v. Redemeier*, 209.

II. Bigamy.

24. Where the prisoner proves that at the time of his marriage with the person named in the indictment as his lawful wife, he had another wife living by a previous marriage, it is error to instruct the jury that the burden is on him to show that this first wife was still alive at the time of the commission of the offence charged in the indictment. *Queen v. Willshire*, 717, and note.

III. Burglary.

25. It would be burglary, to break into, and arson, to burn a house, during the temporary absence of the occupants. *Stupetski v. Ins. Co.*, 418.

IV. Embezzlement.

26. Municipal officer may be indicted for embezzling money of the city though collected by him in excess of his authority. He is estopped from denying the municipality's ownership. *State v. Spaulding*, 109.

V. False Pretence.

27. To constitute a false pretence, a misrepresentation must relate to a past event or existing fact, not to something to be done in the future. *Stocking v. Howard*, 810.

VI. Forgery.

28. The forgery of a note with intent to defraud is punishable, although the

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defendant be not able to utter it, and passing the note knowing it to be forged, is a separate felony also punishable. *Parker v. The People*, 275.

29. While a count for forging and a count for passing the instrument may be joined in one indictment, a separate judgment cannot be had under each count. *Id.*

VII. Larceny.

30. Where one enters a car in one county, with intent to commit a larceny, and commits the larceny after it passes into another county, the offence is indictable in the latter county. *Powell et al. v. The State*, 759.

VIII. Murder.

31. If a party arms himself with a deadly weapon, with the intent to compel another to do any certain thing, or upon his refusal, to kill him, such conditional intent is sufficient to make the homicide murder in the first degree. *State v. Kearly*, 759.

32. The court, in defining reasonable doubt, said: That to exclude such doubt, the evidence must be such as to produce in the minds of prudent men such certainty, that they would act on the conviction without hesitation, in their own most important affairs. *Held*, not error. *Id.*

33. Burden of proving circumstances in mitigation or excuse is not thrown on the defendant, if such facts appear from the evidence for the prosecution. *Alexander v. The People*, 73.

34. No higher degree of proof is required in regard to such circumstances, than in regard to any other fact. If there is a reasonable doubt the prisoner should be acquitted. *Id.*

CUSTOM. See **AGENT**, 8. **COMMON CARRIER**, 4.

DAMAGES. See **EVIDENCE**, 7. **INTEREST**, 1. **NEGLIGENCE**, 6, 13. **NUISANCE**, 7. **RAILROAD**, 10. **REPLEVIN**, 4. **SEDUCTION**, 2. **TRESPASS**, 2, 6.

1. A corporation is not liable for consequential damages arising from the exercise, without negligence, of the right of eminent domain conferred on it by the legislature. *Sumner v. Richardson Lake Dam Co.*, 353.

2. In suit by a mortgagee for injury to the mortgaged premises, the measure of damages is the diminution in the value of the security, and not the depreciation in the property. *Schalk v. Kingsley*, 209.

3. Each of several mortgagees may recover the damages he has separately sustained. *Id.*

4. Damages from failure of tenant to keep and return the premises in good order, are due from the date of demand by the lessor. *Bourdette v. Board of School Directors*, 414.

5. The right to such damages arises *ex contractu*, and the prescription applicable to actions *ex delicto* does not arise. *Id.*

6. Evidence of the value of plaintiff's practice as a physician for five years previous to the injury, held admissible to aid the jury in estimating the amount to be awarded. *Logansport v. Justice*, 797, and note.

7. **EXEMPLARY DAMAGES**, 570.

DEBTOR AND CREDITOR. See **CORPORATION**, 12. **FRAUD. HUSBAND AND WIFE**, 20, 23-25, 29, 34, 35. **PARTNERSHIP**, 9, 10. **POWER**, 1. **SPECIFIC PERFORMANCE**, 1.

1. Moneys given by a married woman to her husband in 1855, and for which she received no evidence or security until 1877, when he had become insolvent: *Held*, not to sustain as against his existing creditors a transfer of property to her in 1877. *Luers v. Brunjes*, 762.

2. Prosecution of claims to judgment, cannot diminish the rights of a creditor to a distributive share of the proceeds from the debtor's property sold under a deed in trust. *Dodge et al. v. Stanhope*, 759.

3. Settlement of accounts with one creditor will not be set aside in favor of another without clear proof of fraud or mistake. *Klauber v. Wright*, 759.

4. A sale is fraudulent in law, unless there is a change of possession; such as would indicate to an observer a change of ownership, exclusive, not joint. *Weeks v. Prescott*, 629.

DEBTOR AND CREDITOR.

5. When the purchaser of personal property acquires the title to the land on which it is situated, it is not necessary to remove it; *aliter*, if he permits the vendor to remain upon the premises, and control the property. *Weeks v. Prescott*, 629.

6. During the pendency of bankruptcy proceedings, the creditors accepted the proposition of compromise, under the United States statute of 1874, and the property was sold by the owner by leave of court. *Held*, that it was not a judicial sale, and that the rule as to a change of possession applied. *Id.*

7. Here were two sales: 1st, from the vendor to his brother, and then by the vendee to a son of the vendor. The first sale was fraudulent in law; the second, both in law and in fact. *Held*, that the second vendee took only the rights of the first. *Id.*

8. It was a sale of a stock of goods in a country store. The vendor remained in possession as agent of the vendee, selling and replenishing the stock with the avails of what was sold. *Held*, that the goods remaining of those originally purchased by the first vendee, were attachable; but those replaced, were not attachable on the debts of the vendor. *Id.*

9. Taking a lease of the store in which the goods were situated, and having it recorded; the transfer of the policy of insurance to the vendee; opening new books of account; buying and having goods sent in the name of the vendee—these are facts that tend to show a sufficient possession. But they are outweighed by the facts, that the vendor continued in the control and management of goods, apparently as before the sale; that the vendee continued to board in his father's (vendor's) family as before; that the goods remained in the same store, and that to a common observer the apparent possession did not indicate a different possession. *Id.*

10. The evidence necessary to show a change in the possession of property transferred by an uncle to his nephews, living together would be different from that otherwise needed; and where there is uncertainty, the question is for the jury. *McLaughlin v. Lange*, 214.

11. One who takes a voluntary conveyance of property knowing that the grantor is unable to pay his debts without it, is guilty of fraud against the creditors. *First National Bank v. Bertschy*, 552.

12. The fact that the grantee assumes to pay a subsisting mortgage of much less than the value of the land, does not deprive the conveyance of its voluntary character. *Id.*

13. Payment of higher interest than the usual rate, if made in pursuance of a previous agreement, is not a fraud on creditors. *Id.*

14. A mortgage is not in fraud of creditors because given to secure an invalid promise, if the invalidity arises merely because the promise is not in such form or evidenced in such manner as the law requires. *Id.*

15. A previous loan to the debtor's son is not a valid consideration for a conveyance as against creditors, unless the loan was made by direction of the debtor and under circumstances raising a reasonable expectation that the debtor would pay it. *Id.*

16. Where there is a valuable consideration for a deed, but not sufficient to uphold it as an absolute conveyance as against creditors, it will be treated in equity as security for the sum advanced. *Id.*

17. Ante-nuptial settlement by insolvent man in consideration of marriage, though intended by him to defraud creditors, is valid in the absence of fraud on the wife's part. *Prewitt v. Wilson*, 491.

18. Voluntary conveyance to wife or child is void against creditors, even though the balance of the debtor's property is nominally greater than his indebtedness, if such conveyance cannot be made without hazard to his creditors. *Patterson v. McKinney*, 278.

19. Mortgaged premises were sold and a decree for deficiency taken against the mortgagor. Thirteen days before such sale, the mortgagor conveyed all his lands, valued at \$50,000, to his sons, one of them a minor, in satisfaction of an alleged indebtedness of \$8000. *Held*, fraudulent as against the mortgagee. *Bank v. Beckman*, 277.

20. One only contingently liable on a contract is a debtor within the meaning of the Statute of Frauds, from the date of the contract. *Schmidt v. Opie*, 278.

DEBTOR AND CREDITOR.

21. A judgment-creditor seeking the aid of equity in respect to his debtor's personal estate, must show not only a judgment, but that an execution has been issued. *Schmidt v. Opie*, 278.

22. Mere inquiry by a creditor to discover whether it would be more for his advantage to approve or contest an assignment for creditors is not an inducement to others to act upon it. *Hubbard v. McNaughton*, 414.

23. The fraudulent character of an assignment does not depend on the assignor's opinion that what he does is not fraud in law. *Id.*

24. Such assignment is fraudulent if property is withheld or excessive liens placed on it. *Id.*

25. A general assignment which stipulates for a release by the creditors, is invalid. *Id.*

DECEDENTS' ESTATES. See CONFLICT OF LAWS, 3, 4. DONATIO MORTIS CAUSA. EXECUTORS AND ADMINISTRATORS. LEGACY. PARTNERSHIP, 8. WILL.

DEED. See AGENT, 15. EQUITY, 13. EVIDENCE, 1, 5, 21-23. LUNATIC, 2. PARTNERSHIP, 13.

1. Verbal admissions inadmissible to modify or vary. *Morrill v. Robinson*, 276.

2. The grantor is estopped by the consideration clause from deny consideration. *Id.*

3. Fee-simple conveyance cannot contain conditions against alienation and liability for debts, and it makes no difference that the conveyance is to one for life and another in remainder. *McCleary v. Ellis*, 180.

4. Conditions in restraint of alienation discussed. *Id.*, note.

5. Calls for adjoiners govern rather than courses and distances. *Koch v. Dunkel*, 74.

6. In cases of ambiguity, articles of agreement, in pursuance of which the deed was made, may be admitted in evidence. *Id.*

7. In a description, the fixed monuments are more to be relied on than the courses and distances, and the fact that the government has established a fixed standard for measurement of distances, cannot affect this rule. *Kalbfleisch v. Oil Co.*, 622.

8. Where premises were described as lot 4, and there was an original lot and a sub-lot both numbered 4, but the description of the buildings thereon showed that the sub-lot was intended. *Held*, that the description was sufficient to render the record of the deed notice. *Bowen v. Galloway*, 414.

9. It is not necessary that land shall be called by any particular name; it is sufficient if the description is such as to identify the property. *Id.*

10. Where the description is by mistake so defective that the property cannot be identified, the deed is not notice, nor can it be reformed as against a bona fide purchaser. *Id.*

DELIVERY. See CORPORATION, 13. SALE, 13. WAREHOUSEMAN, 6.

DEMURRER. See CRIMINAL LAW, 6, 9. TRADE-MARK, 6.

DESCENT. See CONFLICT OF LAWS, 3, 4.

DEVISE. See WILL, 3-5.

DIVORCE. See HUSBAND AND WIFE, I.

DOMICILE. See CONFLICT OF LAWS, 3, 4.

DONATIO MORTIS CAUSA.

One C. in anticipation of his own death sold a carriage, the price to be paid in farm produce to his wife. *Held*, that his widow and not his executor was entitled to the produce. *Scruggs v. Alexander*, 489.

DOWER. See HUSBAND AND WIFE, II.

DRAFT. See ACCEPTANCE. BILLS AND NOTES, 4.

DURESS. See PAYMENT, 1. TAXATION, 3.

1. Note and mortgage given by a father under threats to prosecute his son, may be avoided on the ground of duress. *Harris v. Carmody*, 663, *and note*.

DURESS.

2. Such defence need not be specially pleaded to a complaint to recover the mortgaged premises. *Harris v. Carnody*, 663, and note

DUTIES. See **STATUTE**, 3.

EASEMENT.

1. Cannot be created by parol. *Banghart v. Flummerfelt*, 699.
2. Action at law will not lie on parol unwritten agreement with a former owner of plaintiff's mill, to erect on his own land a dam and aqueduct, and to keep up the same. *Id.*

EJECTMENT. See **HOMESTEAD**.

- One in actual possession cannot maintain ejectment against a person not in possession. *Carmichael v. Argard*, 553.

EMBEZZLEMENT. See **CRIMINAL LAW**, IV.

EMINENT DOMAIN. See **DAMAGES**, 1.

ENCUMBRANCE. See **INCUMBRANCE**.

EQUITY. See **ACTION**, 1. **AMENDMENT**, 2. **CORPORATION**, 11. **COSTS**, 4. **ERRORS AND APPEALS**, 14. **INSURANCE**, 3, 7. **MESNE PROFITS**. **NUISANCE**, 1. **POWER**, 1. **SPECIFIC PERFORMANCE**. **TAXATION**, 2.

1. Will interfere by injunction in favor of one claiming under unrecorded deed to prevent sale under deed of trust held by one who took it with notice. *Martin v. Jones*, 420.

2. Bringing suit against only one of several persons to recover an entire sum received by him under a constructive trust, but divided with others, should preclude separate suits against the rest. *German American Seminary v. Kiefer*, 489.

3. Equity will not interfere to enforce merely constructive trust after long delay. *Id.*

4. Equity will not encourage the splitting of causes of action. *Id.* ¶

5. An equitable action of assumpsit, if it lies at all, will be outlawed by the same lapse of time as bars an action at law. *Id.*

6. Agreement to admit person to medical institute and assist in his graduation in consideration of his abandoning a fictitious name similar to that of the other party who is a member of the faculty, is of such doubtful propriety that equity will not enforce it. *Olin v. Bate*, 415.

7. Nor will an injunction be granted to restrain the use of such name in a city, when it appears that defendant had used the name before complainant came to the city. *Id.*

8. The rule that where a creditor has a lien upon two funds, in one of which the debtor has no interest, he must first exhaust the latter, does not apply if other persons have a superior equity in that fund. *Baird v. Jackson*, 415.

9. Bill will not be sustained to remove alleged cloud on title when the invalidity of the instrument constituting such cloud is apparent on its face, nor when the invalidity of a tax title is involved and there is no offer to pay the tax. *Briggs v. Johnson*, 354.

10. Will not relieve for mistake or ignorance caused by plaintiff's gross negligence. *Conner v. Welch*, 353.

11. Contract will not be set aside because of ignorance of the law, nor because of statement of defendant's attorney as to the law if such statement was not relied on. *Dailey v. Jessup*, 489.

12. Where a creditor's claim against the debtor's estate was retained until a few days before the expiration of the time for notice, and then accidentally delayed in the mail beyond such time, the court cannot relieve on the ground that the creditor, through misreading his own entry, fell into error as to the time. *Ellison v. Lindsley*, 338.

13. Cannot reform deed in absence of fraud, accident or mistake. *Grubb's Appeal*, 74.

14. Cannot enjoin one having a right to dig ore from taking more than his contract calls for. *Id.*

EQUITY.

15. Nor decree an account in a mere matter of charge for a certain number of tons of ore. *Grubb's Appeal*, 74.

16. Bill to set aside judgment on ground that complainant's attorney was engaged in another court, and that the opposite attorney fraudulently presented only part of a record, not sustained where the charges of fraud were general and no injury is shown to have resulted from the omission. *Dinet v. Eigenmann*, 74.

17. An answer under oath, though denying fraud, is insufficient to overcome the testimony of two witnesses if it also contain admissions of facts from which fraud follows as a legal conclusion. *Bank v. Beckman*, 278.

18. Sale under a decree cannot be attacked collaterally by setting up, that the solicitor who acknowledged service of the subpoena had no authority, nor that the ticket accompanying the subpoena did not apprise the defendant of the ground of complaint. *Dickinson v. City of Trenton*, 276.

19. BILLS TO QUIET POSSESSION AND TITLE, 561.

ERRORS AND APPEALS. See BANKRUPTCY, 1. BILL OF EXCEPTIONS. COSTS, 1. CRIMINAL LAW, 4, 9, 17. EVIDENCE, 6. RECEIVER, 1. U. S. COURTS, 4, 14-19.

1. A writ of error to the Supreme Court of the United States, issued from the Supreme Court of a state, is void, as not being in conformity with sect. 1004 Rev. Stat., and cannot be amended under sect. 1005. *Bondurant v. Watson*, 554.

2. It is doubtful whether under the Act of 1872, Rev. Stat. 914, cases tried in the U. S. Circuit Courts by a referee in states where such a practice exists can be reviewed in the Supreme Court. *Boogher v. N. Y. Life Ins. Co.*, 622.

3. Treating such a case as if tried by the court without a jury, the finding of facts by the referee is conclusive. *Id.*

4. Although the record does not show the written stipulation of the waiver of a jury required by the Act of 1865, Rev. Stat. 649, 700, yet if it appears that under the state practice, the case could not have been referred without the written consent of the parties, the appellate court will assume that a written stipulation was filed. *Id.*

5. Where the exceptions to a referee's report are overruled as a whole, and one exception is taken to the action of the court overruling them, this exception will not be sustained, if any one of the findings of the referee excepted to was correct: *Id.*

6. Certiorari lies at common law, first, where it is shown that the inferior court has exceeded its jurisdiction; and second, where such court has proceeded illegally, and no appeal or writ of error lies. *Hyslop v. Finch*, 698.

7. It simply brings before the court the record of the inferior tribunal, and its judgment affects the validity of the record alone. *Id.*

8. Extrinsic evidence may be received to show that no injustice has been done; or that for any good reason, the writ ought not to be granted. But when the record is before the court on the return of the writ, the court will look only at the record. *Id.*

9. Mere lapse of time, short of the limitation for prosecuting a writ of error, will not bar the issuing of the common law certiorari. *Id.*

10. The discharge of a receiver furnishes no ground of appeal. Nor does the rescission of an interlocutory order of sale, which determined no right. *Washington City, &c., Railroad Co. v. Southern Railroad Co.*, 810.

11. When the instruction given by the court was correct and sufficient, the appellate court will not reverse for a failure to give other instructions asked for, even though the latter would have been also correct. *Recknagie v. Murphy*, 415.

12. Appeal may be taken from joint salvage award for more than \$5000, although the amount apportioned to some of the joint salvors was less than that sum. *Sinclair v. Cooper*, 490.

13. Where several causes have been litigated by all of the defendants out of a common fund, the appellate court will not accept the submission of one of them against the wishes of the others. *St. Louis S. & Railroad Co. v. Kemp*, 354.

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14. Under sect. 1012 Rev. Stat. the Supreme Court may adjudge damages for delay on appeals as well as on writs of error, and this power is not confined to money judgments. *Gibbs v. Diekma*, 354.

15. When accounts are stated by the auditor to represent the claims of the respective parties under their instructions, such accounts may be reviewed on appeal though no exception was taken. *Walter v. Foutz*, 354.

16. A decree authorizing the comptroller-general to take charge of a railroad but not finally settling his rights as against creditors of the road, is not a final decree to which a writ of error will lie. *Hand v. Hagood*, 354.

17. Erroneous instruction favorable to losing party no ground for reversal. *Andrews v. Conger*, 328.

18. Objection as to the time of the production of evidence will not be reviewed on appeal. *Crenshaw v. Slye*, 354.

19. Appellate court will not reverse for refusal of several propositions presented as a whole, if either of them was erroneous. *United States v. Hough*, 210.

20. An exception to the admission of irrelevant testimony is cancelled, when the court, before the final submission of the case, instructs the jury to disregard such evidence. *Pennsylvania Co. v. Roy*, 245.

21. The finding of facts by the court in an admiralty case, will have the effect of a verdict of a jury. *Steamship Benefactor v. Mount*, 274.

22. In case of a trial by submission without a jury, exceptions to the judgment of the court upon the facts, will not be considered by the appellate court. *Bank v. Winslow*, 138.

23. An order imposing a fine for contempt in disobeying an injunction, is not reviewable on writ of error. *Hayes v. Fischer*, 209.

24. The fact that the bond contains no security for costs does not necessarily avoid the appeal, but the court may impose terms on the appellants for the omission. *Seward v. Comean*, 276.

ESCHEAT. See COSTS, 5.

ESTOPPEL. See CORPORATION, 2, 9, 11. CRIMINAL LAW, 26. DEED, 2. MUNICIPAL BONDS, 6, 7. NEGOTIABLE INSTRUMENTS, 2. NUISANCE, 3. RAILROAD, 4, 7. SPECIFIC PERFORMANCE, 3. VENDOR AND VENDEE, 2. VESSEL, 3.

1. The obligors in a delivery bond, which recites a levy, are estopped in an action on the bond from pleading that there was no levy. *Hundley v. Philbert*, 810.

2. A grantee taking subject to a mortgage is estopped, as against the mortgagor, from acquiring title under a tax levy caused by his own default. *Leppo v. Gilbert*, 760.

3. Such title would be void in the hands of a subsequent purchaser, without other notice than the record of the mortgage and conveyance and the possession by his grantor. *Id.*

4. One who acts as secretary of school trustees of a township for eleven years is estopped from denying the legality of their election. *Frick v. Trustees of Schools*, 700.

5. An obligor on a bond, who has availed himself of the benefit of a stay law passed by a seceding state, is estopped from setting up its invalidity. *Daniels v. Tearney*, 416.

6. Where a party permits his name to be affixed over another's place of business, he is liable to those giving credit. *Lochte v. Gele*, 416.

7. Estoppel may be worked by actions as well as words. *Id.*

8. To estop an owner of land from asserting his title, an intention to deceive, or negligence so gross as to amount to constructive fraud, must be shown. *Kingmar v. Graham*, 355.

9. If his title is recorded, he is not estopped by silence, unless directly apprised that the person dealing with him is about to act in ignorance of his title. *Id.*

10. Misrepresentation by an agent to new officers of a company as to the terms of his contract of employment, will not estop him from afterwards setting up the real contract. *Alliance Ins. Co. v. McKnight*, 210.

ESTREPEMENT. See MALICIOUS PROSECUTION, 2.

EVIDENCE. See AGENT, 3. BILLS AND NOTES, 34. BOND, 3. COMMON CARRIER, 8. CRIMINAL LAW, 2, 5, 6, 16, 19-23, 34. DAMAGES, 6. DEED, 1, 6. FOREIGN JUDGMENT, 2. FOREIGN LAW. HUSBAND AND WIFE, 1, 24, 25, 33. LIMITATIONS, STATUTE OF, 3. MASTER AND SERVANT, 12. MORTGAGE, 13. MUNICIPAL CORPORATION, 13. NEGLIGENCE, 1, 3. NEW TRIAL, 1. SALE, 3. TELEGRAPH. VENDOR AND VENDEE, 3. WITNESS.

1. Declarations by grantor subsequent to the deed are inadmissible against the grantee. *Dodge v. Stanhope*, 760.

2. Where two are sued as partners, the statements of one in the absence of the other are not evidence of the partnership as against the latter. *Johnston v. Clements*, 490.

3. The admission by a party of the existence of an assessment, under the provisions of a municipal charter authorizing it, will render unnecessary proof of the validity or regularity of such assessment. *Turrell v. City of Elizabeth*, 623.

4. A plaintiff, whose success depends on the admission of evidence offered by defendant, cannot complain that the court has made use of that evidence so far as it was favorable to defendant. *Id.*

5. Deed by two grantors is admissible in evidence, although the certificate of acknowledgment is defective as to one of them. *Peoples' Bank v. Winslow*, 210.

6. Courts generally take judicial notice of the public officers, and, in some cases, their signatures; and when the trial court acts upon such judicial notice the appellate court will presume that it acted properly. *Walcott v. Gibbs*, 210.

7. When the wife is the substantial party to a suit, her husband is not a competent witness. Evidence of the circumstances under which an assault was committed is admissible, either in aggravation or in mitigation of damages. If there are no circumstances of malice or oppression, compensatory damages only can be recovered, and if such damages only are asked, the motive of the defendant is wholly immaterial. *Joice v. Branson*, 811.

8. Where the question is whether a machine purchased failed through defect in its construction or in consequence of mismanagement, it is material error for the court to permit testimony that some other machine furnished by the same manufacturer similarly failed. *Craver v. Hornburg*, 764.

9. Where the whole of an offer is objected to, it is error to exclude it if any part of it is admissible; but in such case it must appear that some part is clearly admissible. *Eckenrode v. Chemical Co.*, 810.

10. Objection to depositions that they were taken without notice should be made by motion to suppress before trial. *Holman v. Bachus*, 811.

11. The question as to the time of a material alteration on the face of a written instrument is one for the jury. *Neil v. Case*, 554.

12. Where a written contract is uncertain parol evidence of the situation of the parties and of the subject-matter is admissible, and in such case the construction subsequently put upon it by the parties themselves, as evinced by their conduct, may be shown. *Wilson v. Morse*, 491.

13. When a telegram is offered in evidence, the original must be produced, or, in case of its loss, the next best evidence the case will admit of must be furnished. *Barous v. Brown*, 490.

14. Testimony of operator as to entries in book not made by him held insufficient to prove such telegram. *Id.*

15. Books kept by telegraph company inadmissible, except to refresh recollection of person making the entries. *Id.*

16. Certificate of acknowledgment cannot be impugned by mere denial under oath by the party, opposed by equally strong evidence in support of the certificate. *Johnson v. Van Velsor*, 490.

17. Foreign statutes should be proved as provided for in the state laws and acts of Congress rather than by the testimony of a lawyer. *Kopke v. The People*, 490.

18. A printed copy of state statutes purporting to be published by authority is admissible in evidence. *Harryman v. Roberts*, 373.

19. The signature of a court clerk to a certificate need not contain his full Christian name. *Id.*

20. Where a bill is filed in aid of execution, and the purchaser of land is

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made a defendant, his neglect to make an affirmative showing to support the sale will warrant a court in giving their full force to any legitimate inferences from the evidence given against it. *Whitney v. Rose*, 417.

21. Testimony of grantor alone not sufficient to overcome the proof of the execution of a deed afforded by the certificate of its acknowledgment. *Baird v. Jackson*, 417.

22. The acts and conduct of one who claims that a deed purporting to be his is a forgery, done before he had knowledge of the deed, cannot be used to contradict his testimony. *Id.*

23. Where a joint deed is claimed by both grantors to be a forgery, proof of the forgery as to one raises a presumption as to the forgery of the other, and is admissible as part of the *res gestæ*. *Id.*

24. If the party who made book entries received the items from another, that other should testify to their correctness, or satisfactory proof thereof should be produced in addition to the entries. *Stettaner v. White*, 416.

25. In a suit for breach of contract to buy an account of the plaintiff, he is bound to prove his account as in a suit upon the account itself. *Id.*

26. Certain evidence held insufficient to prove such account. *Id.*

27. The proviso to section 858 Rev. Stat. that in actions by or against executors, &c., neither party shall be allowed to testify, does not exclude those who are not parties, but who have an interest in the issue. *Potter v. Bank*, 277.

28. The federal courts do not follow the rules of evidence prescribed by a state when such rules are in conflict with the Revised Statutes. *Id.*

29. In questions of private boundary, declarations of particular facts made by deceased persons are not admissible unless made by persons shown to have had knowledge, or by persons on or in possession of the land while pointing out the boundaries. *Hunnicut v. Peyton*, 75.

30. Witnesses are not allowed to give opinions unless they are experts, and then only upon questions of science and skill. *Monroe v. Lattin*, 626.

31. When an expert is testifying to handwriting from comparison of hands, he should have before him in court the writings compared. *Hynes v. McDermott*, 44.

32. Photographic copies of originals not produced are not admissible as foundation for a comparison of hands. *Id.*

33. Any person acquainted with the handwriting may give his opinion, and the acquaintance need not be from seeing the person write, but if the standards upon which he formed his opinion were selected by or in the interest of the party calling him, he is incompetent. *Id.*

34. Books professing to contain the laws of a foreign country, but not published by the government thereof or under its express sanction, are not evidence. *Id.*

35. Presumptions as to continuance of state of facts proved to have existed at a time anterior to that in question (as *e. g.* the statute law of a foreign state) discussed. *Id.*

EXECUTION. See CONSTITUTIONAL LAW, 11. ESTOPPEL, 1. FIXTURE, 3. GROWING CROPS. HUSBAND AND WIFE, 20, 30. MUNICIPAL CORPORATION, 2. PARTNERSHIP, 2. REPLEVIN, 1, 6. SALE. SHERIFF. SHERIFF'S SALE.

1. At common law a writ of execution is not abated by the death of the judgment-creditor, and the officer is not liable in trespass for serving it. *Wing v. Hussey*, 355.

2. Where no trespass is committed by the officer, the person directing the service is not guilty of trespass. *Id.*

3. Statute exempting stock of mechanic, minor or other person used in carrying on his business, applies to stock of goods on sale by a merchant. *Wicker v. Comstock*, 491.

4. If the officer refuses to give the debtor an opportunity to make a selection or denies his right to an exemption, the want of actual selection will not be a waiver of the right. *Id.*

5. The word "householder" in the exemption laws includes a widower whose children have arrived at full age and have left his domicile. *Bunnell v. Hays*, 751, and note.

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6. Where one has only an adopted child, and employs a family to keep house for him, he is a householder. *Bunnell v. Hays*, 751.

EXECUTORS AND ADMINISTRATORS. See ACTION, 6. ADMIRALTY, 13. DONATIO MORTIS CAUSA.

1. Cannot invest trust funds in municipal bonds or bank stock. *Tucker v. Tucker*, 355.

2. Where commissions are paid on part of the estate at an intermediate accounting, they can only be allowed on the subsequent receipts, and must be calculated as if the subsequent receipts were part of the prior receipts. *Id.*

3. Administrator withdrawing from deposit funds held to await the appearance of a distributee, is liable for interest at the legal rate. *Matter of Doremus's Estate*, 355.

4. Administrator has no legal power to borrow money and pledge the property of the estate, and a bill brought against him for the recovery of the money out of the estate, and not joining the heirs, will be dismissed. *MERCHANTS' Nat. Bank v. Weeks*, 697.

5. Whether the money should be repaid from the estate, is a question for the Probate Court upon a settlement of the administrator's account. *Id.*

6. A decedent left no property but his wearing apparel. His widow paid the expenses of his last sickness and of his burial, and gave to his brother a suit of his clothes of less value than the amount thus paid. *Held*, that she was not liable as executrix in her own wrong. *Taylor v. Moore*, 75.

EXEMPTION. See EXECUTION, 3-6.**EXPERT.** See CONTRACT, 13. EVIDENCE, 30, 31**EXPRESS COMPANY.** See RAILROAD, 2-4**FALSE IMPRISONMENT.** See CONSTITUTIONAL LAW, 6. MALICIOUS PROSECUTION, 4.**FALSE PRETENCE.** See CRIMINAL LAW, V**FENCE.**

When built on the land of another without agreement as to removal, may be removed and disposed of by the owner of the land. *Kimball v. Adams*, 760.

FERRY. See COMMON CARRIER, 13, 14**FIXTURE.** See GROWING CROPS.

1. The requisites of a fixture are 1. Actual annexation. 2. Application to the use to which the realty is appropriated. 3. The intention. *Ward v. Kilpatrick*, 785, and note.

2. Mirror-frames set in hall and parlor, and intended to be permanently attached, *Held*, to be part of the realty, and the proper subject of a mechanic's lien. *Id.*

3. Wooden building resting partly on the ground and partly on posts set into the ground, and intended to be permanently used as a dancing-hall in connection with an adjoining saloon, *Held*, as against an execution creditor, to be part of the realty. *Lipsky v. Borgman*, 760.

4. Machinery specially adapted for use in connection with the realty, is a fixture, no matter how designated by the parties. *Lyle v. Palmer*, 277.

5. The water-wheel and gearing of a mill are fixtures. *Lapham v. Norton*, 277.

6. A mill built upon land in possession of the builder, and under a verbal contract for its purchase, becomes a part of the realty, and the same result follows though built for a third person, with the understanding that such third person will take the premises upon certain conditions. *Id.*

7. A person in possession, under a verbal contract of purchase, is not liable for rent, and improvements made while such contract is in force are not made by him as tenant. *Id.*

FOREIGN JUDGMENT. See FORMER ADJUDICATION, 3. JURISDICTION.

1. Does not merge the cause of action, and assumpsit will lie upon the same cause. *Bank v. Beebe*, 404.

FOREIGN JUDGMENT.

2. Such judgment is of no higher nature than the cause of action on which it was obtained, and is only *prima facie* evidence of indebtedness. *Bank v. Beebe*, 404.

FOREIGN LAW. See EVIDENCE, 17, 18, 34. STATUTE, 4. SUNDAY, 2.
How to be proved and interpreted. *Note to Harryman v. Roberts*, 377.

FORFEITURE. See INSURANCE, 3, 11. SPECIFIC PERFORMANCE, 4.

FORGERY. See CORPORATION, 9, 10. CRIMINAL LAW, VI. EVIDENCE, 22, 23.

FORMER ADJUDICATION. See AGENT, 16. JOINT DEBTORS. PARENT AND CHILD, 3.

1. The dismissal of a previous bill for want of a replication to a plea is a bar to relief. The presumption that the plea went to the merits, is not overthrown by mere averment in second bill that there had been no adjudication on the merits. *Leary v. Long*, 138.

2. Order of bankruptcy court awarding damages for taking of land by bankrupt railroad, no bar to suit by landowner for the recovery of the land. *Burnes v. St. Louis, K. C. & N. Railroad Co.*, 138.

3. A judgment against a defendant in one state is a bar to a suit on the same cause of action in another, if the first court had jurisdiction. *Harryman v. Roberts*, 373.

4. If the subject-matter was the same a difference in the form of action is not material. *Id.*

5. Such judgment is not invalidated by the fraudulent consent of the defendant to the dismissal of his motion to set it aside. *Id.*

FRANCHISE. See INJUNCTION, 2. RAILROAD, 1. UNITED STATES COURTS, 13.

FRAUD. See ARBITRATION, 4, 5. BANKRUPTCY, II. BILLS AND NOTES, 7. CORPORATION, 12. DEBTOR AND CREDITOR, 1, 4-19, 23-25. HUSBAND AND WIFE, 23. MORTGAGE, 15. SALE, 15. SPECIFIC PERFORMANCE, 1.

Proof that a conveyance was made by an indebted wife to her husband, is not in itself sufficient to prove fraud when met by their testimony, that there was a valuable consideration, and that they were ignorant of the existence of the claim of the attacking creditor. *Tyberandt v. Rancke*, 75.

FRAUDS, STATUTE OF. See BILLS AND NOTES, 24. DEBTOR AND CREDITOR, 20.

While the form of the written memorandum required by the statute is not material, it must state the contract with reasonable certainty, so that the substance can be made to appear from it without having recourse to parol proof. *Reid v. Kemcorthy*, 554.

GARNISHMENT. See ATTACHMENT, 2, 3.

GENERAL AVERAGE. See INSURANCE, 8.

GIFT. See DONATIO MORTIS CAUSA.

Voluntary conveyance of furniture and articles to wife by letters, is not such a declaration of trust as will prevent their forming part of the husband's residuary estate. *In re Breton's Estate*, 811.

GROWING CROPS. See LANDLORD AND TENANT, 9. MORTGAGE, 11.

Crops matured and ready for harvest although not severed, are personal chattels, and do not pass by sheriff's deed upon foreclosure sale. *Hecht v. Dittman*, 615, and note.

GUARANTY. See BILLS AND NOTES, 12, 19, 20, 25, 26, 28. NATIONAL BANK, 1, 3. SURETY. WAREHOUSEMAN, 1.

1. When conditional must be accepted and guarantor notified of its acceptance. *King v. Batterson*, 624.

2. If the goods were furnished by some other persons than the one to whom the guarantee was addressed, such persons cannot recover on the ground that the party to whom it was addressed was their agent. *Id.*

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3. "I, C. H., hereby agree to be responsible that L. shall faithfully perform and keep this agreement," is a guaranty only, and L. and C. H. cannot be jointly sued thereon. *Smith v. Loomis*, 811.

GUARDIAN AND WARD. See **SUBROGATION.**

Guardian held liable for note given by him to ward's mother and after her death taken into his own custody ostensibly for safe keeping, also for the proceeds of furniture belonging to the ward's mother and sold at auction by him. *McGill v. O'Connell*, 356.

HABEAS CORPUS. See **PARENT AND CHILD**, 3.**HEIRS.**

Rights of heirs during lifetime of ancestor. *Note to Bartle's Petition*, 99.

HIGHWAY. See **CRIMINAL LAW**, 8. **MUNICIPAL CORPORATION**, 17-19, 26. **NEGIGENCE**, 4, 7, 8, 19. **NUISANCE**, 12.**HOMESTEAD.** See **HUSBAND AND WIFE**, 8, 9, 36, 37, 41.

Defendant in ejectment cannot claim, under the Homestead Act, land exceeding the statutory limit. *Blandy v. Asher*, 491

HOUSEHOLDER. See **EXECUTION**, 5, 6.**HUSBAND AND WIFE.** See **CONFLICT OF LAWS**, 1, 2. **CRIMINAL LAW**, 24. **DEBTOR AND CREDITOR**, 1, 17, 18. **EVIDENCE**, 7. **FRAUD. GIFT. INFANT**, 1. **INSOLVENCY. INSURANCE**, 7. **PARENT AND CHILD**, 2**I. Marriage, Divorce and Alimony.**

1. Marriage may be proved by evidence of cohabitation, acknowledgment and reputation. *Hynes v. McDermott*, 44.

2. Whether acts sufficient to constitute a marriage by the laws of New York, done in a foreign state, by the laws of which they would not be sufficient, will be held to constitute a valid marriage in New York, *quære?* *Id.*

3. In the absence of evidence of the law of the foreign state, it will not be presumed to be different from the law of the former. *Id.*

4. Whether a vessel on the high seas carries with it the marriage law of its nationality, *quære?* *Id.*

5. Effect of conflict between *lex domicilii* and *lex loci* discussed. *Id.*, note.

6. Condoned adultery may be revived by misconduct which falls short of adultery. *Ridgway v. Ridgway*, 783, and note.

7. Where a divorced wife marries another man who is able to support her, the first husband will be absolved from future alimony, but the decree will not be made retroactive so as to cut off accrued alimony. *Stillman v. Stillman*, 667, and note.

8. Divorce obtained by wife will not deprive her of homestead rights in land acquired during coverture, and on which she continues to reside. *Blandy v. Asher*, 491.

9. In the absence of evidence of a new homestead, the place which was the husband's homestead at the time of his abandonment of his family will, for the purpose of preserving their rights, be treated as his homestead. *Id.*

10. If a husband forces his wife from home by cruel and brutal treatment, he deserts her. *Skean v. Skean*, 276.

11. But not if she leaves him merely because of his failure to furnish support. *Id.*

12. Wilful misconduct of husband which endangers the health or life of wife, exposes her to bodily hazard and intolerable hardship, and renders cohabitation unsafe, is "cruel and inhuman treatment;" and even a single act of that character may, under certain circumstances, warrant a divorce. *Beyer v. Beyer*, 138.

II. Curtesy and Dower.

13. While a wife's inchoate right of dower in her husband's estate may be released during his life, it cannot be bargained and sold. *Reiff v. Horst*, 700.

14. Wife joining with the husband in a conveyance of his property in trust for creditors, the deed providing that she should receive a portion of the proceeds in lieu of her right of dower, will be allowed such portion. *Id.*

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15. Statute of Limitations does not run against action for dower until adverse possession by heirs or grantees. *Felch v. Finch*, 74.

16. Widow not entitled to improvements as against purchasers without knowledge of marriage, and enhancement in value by reason of money spent in laying out lots and securing the erection of a depot, is such an improvement. *Id.*

17. Widow is not obliged to pay taxes levied before assignment of dower. *Id.*

II. *Separate Estate.*

18. The general engagements of a married woman cannot be enforced against her separate estate to which she became entitled after the time of the engagements, nor against separate estate to which she was entitled at the time of the engagements subject to a restraint on anticipation. *Pike v. Fitzgibbon*, 812.

19. Under the Illinois law, a wife may own separate funds and invest them in business without subjecting them to her husband's debts, and she may employ her husband to assist in such business. *Cubberly v. Scott*, 418

IV. *Contracts, Conveyances, &c.*

20. Husband may confess judgment in favor of his wife without a trustee, and execution may issue thereon. *Rose v. Latshaw*, 76.

21. Contract of husband and wife to convey her land, is not within a statute providing that "actions may be maintained against a married woman upon any contract made by her since her marriage upon her personal credit for the benefit of herself, her family or her separate or joint estate." Such contract is not enforceable against both jointly nor against either alone. *Gore v. Carl*, 76.

22. Payments made to the husband upon such contract cannot affect the wife's rights. *Id.*

23. Fraudulent conveyance to wife after creditor has lost his lien, may, after revival of the lien, be attacked by the creditor. *Bennett v. Stout*, 418.

24. The fact that a wife employs her husband as her agent to cultivate her farm and have the grain harvested, stored and sold, is not evidence that the property belongs to the husband, and will not render the farm products liable to his debts. *Id.*

25. On bill to set aside a conveyance alleged to have been taken by the husband in the name of the wife, the declarations of the husband and others made in the absence of the wife, are not admissible. The same rule applies to the declarations of the grantor in the deed. *Id.*

26. Money received by a husband from the sale of his wife's real estate made before the adoption of the Maryland Code, belongs to him, unless he obtained it by promising to repay it to his wife. *Sabel v. Slingluff*, 278.

27. A promise to make such repayment creates a debt which may be barred by the Statute of Limitations. *Id.*

28. A bill to carry out the directions of a will for the sale of real estate, with prayer for general relief, is not a creditor's bill and does not prevent the running of the Statute of Limitations. *Id.*

29. Sale of chattels by husband to wife unaccompanied by delivery, cannot be enforced at law under New Jersey statutes. *Woodruff v. Appar*, 211.

30. Where such goods are seized on an execution against the husband, replevin does not lie by the wife. *Id.*

31. Mere fact of cohabitation not sufficient to give wife implied authority to pledge husband's credit for necessities. *Debenham v. Mellon*, 316.

32. Extent of husband's liability upon wife's contract for necessities. *Id.*, note 324.

33. Defence by wife to note and mortgage duly executed, and acknowledged that she executed them under coercion of her husband, can be sustained only upon perfectly clear evidence. The unsupported testimony of the wife is insufficient. *Smith v. Allis*, 492.

34. Conveyance in consideration of marriage, if *bona fide* and reasonable, is good against both existing and subsequent creditors. *National Exchange Bank v. Watson*, 624.

35. To make an ante-nuptial settlement void against creditors, both parties must have been cognisant of the fraud. *Id.*

HUSBAND AND WIFE.

36. Homestead right cannot be barred by ante-nuptial release. *Mann v. Mann's Estate*, 700.

37. Ante-nuptial contract not to claim homestead can only be enforced in equity, and will not be there enforced unless the husband has performed his part of the agreement. *Id.*

38. The principle, that whatever title a grantee with covenants of warranty subsequently acquires enures to the benefit of the grantor, does not apply to a married woman joining in a deed with her husband. *Goodenough v. Fellows*, 762.

39. Not considered what might be held in equity respecting an after-acquired title of the separate real estate of the wife, which she had once conveyed for a full consideration with a general covenant of warranty. *Id.*

40. The right of distress by a landlady is not lost by an unauthorized agreement by her husband to suspend it. *Cahill v. Lee*, 811.

41. Husband cannot lease homestead without wife's consent, where the lease interferes with the enjoyment of the premises by the wife. *Coughlen v. Coughlen*, 761.

IDEM SONANS. See NAME, 2.

IMPORTS. See STATUTE, 3.

INCUMBRANCE. See COVENANT, 2. INSURANCE, 16. LIEN. MECHANIC'S LIEN. MORTGAGE.

INDICTMENT. See CRIMINAL LAW, 3, 9, 12, 29.

INFANT. See GUARDIAN AND WARD. PARENT AND CHILD. VENDOR AND VENDEE, 6.

1. While under the Infants' Relief Act, a contract of marriage made by minors cannot be ratified, yet the fixing of the wedding day after arrival at age, is not merely a ratification but evidence of a fresh promise. *Ditcham v. Worrell*, 447.

2. What acts amount to a ratification and what to a fresh promise. *Id.*, note.

3. After an infant becomes of age, he cannot disaffirm his contract made during infancy without returning to the other party what he has received under it and still possesses. *Burgett v. Barrick*, 554.

4. The language "capable of contracting" in sect. 3, c. 67, p. 553, Comp. Laws of Kansas 1879, is to be understood as "legally capable" and not "mentally capable." *Id.*

5. In suit for money earned jointly by an infant and an adult, the infant's father cannot sue with the adult in his own name. *Osburn v. Farr*, 211.

6. Joint maker of note with infant may be held as sole maker. *Taylor v. Dansby*, 139.

INJUNCTION. See EQUITY, 1, 7, 14. JUDGMENT, 1. NUISANCE, 1-5. TAXATION, 2.

1. Will usually be granted to prevent the erection of obstructions on a strip of ground alleged to be a public way, but if there is an agreement between complainant and respondent for the use of the strip of ground, the remedy would be on the agreement. *Gore v. Brubaker*, 762.

2. An injunction to restrain an oil company from laying a pipe underneath the drawbridge of a railroad company refused, because, 1. The pipe had been laid before the application. 2. The lands where the pipe crossed the bridge belonged to the state. 3. The pipe did not obstruct the operation of the drawbridge, and 4. The railroad company's franchise of carrying oil was not exclusive. *United N. J. R. R. & C. Co. v. Standard Oil Co.*, 279.

3. Where defendants, in opening a road through plaintiff's property, are cutting his timber and exposing his crops to the depredations of stock, such injury is irreparable, and an injunction will be granted without proof of defendant's insolvency. *McPike v. West*, 211.

4. Where one creditor cannot be injured by the dissolution of an injunction, granted on the filing of a bill by creditors against a corporation; and its con-

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tinuance would defeat the plans for the reorganization of the corporation entered into by the creditors, it will be dissolved. *Washington City Railroad Co. v. Southern Md. Railroad Co.*, 810.

INNKEEPER.

1. Liable for safety of place provided by him for cattle. *Hilton v. Adams* 279.
2. In the absence of any notice to the contrary, the jury were warranted in finding that the cattle were delivered to him as innkeeper. *Id.*

INSANITY. See **LUNATIC.** **CRIMINAL LAW**, 23.

INSOLVENCY. See **BANKRUPTCY.** **CORPORATION**, 12. **DEBTOR AND CREDITOR.**

Insolvent law of Maryland not applicable to a married woman. *Building Association v. Schmidt*, 762.

INSURANCE. See **LANDLORD AND TENANT**, 7. **VERDICT.**

I. Generally.

1. A superintendent of the insurance department of a state may, as the statutory successor of an insurance company, become a party to a suit in another state touching the assets of the company, and may, on account of his citizenship, remove the case to the federal courts. *Life Association of America v. Rundle*, 555.
2. Policies are not required to be in writing, and may be changed by parol. *Roger Williams Ins. Co. v. Carrington*, 492.

II. Marine. See *Infra*, 8.**III. Life.**

3. Equity will not relieve against the forfeiture of a policy for non-payment of interest on premium-note at stipulated time. *Knickerbocker Life Insurance Co. v. Dietz*, 279.
4. A company forwarding to its agent a policy, is not liable upon the death of the assured before receipt of the policy and payment of premium. *Giddings v. Insurance Co.*, 76.

IV. Fire.

5. Where a statement of loss is required to be sworn to by the owner of the property, a statement sworn to by the husband of the owner is insufficient. *Spooner v. Vermont Mutual Fire Insurance Co.*, 762.
6. The company does not waive the defects in the statement by proceeding to a determination of the plaintiff's claim. *Id.*
7. Reformation of policy issued in name of wife on husband's property refused after loss, there being no proof of fraud or mutual mistake. *Doniol v. Insurance Co.*, 760.
8. The law of general average is not a part of the risk incident to a fire policy, even though the policy be on a vessel. *Miners' Trans. Co. v. Fireman's Ins. Co.*, 201.
9. A clause avoiding a policy if the premises should "become vacant or unoccupied." *Held*, not to apply where the insured and his family left home for twelve days to visit a sick daughter, and engaged a person to go to the house daily to look after it. *Stupetski v. Ins. Co.*, 418.
10. Removal of goods without the consent of the company, to another building which happens also to answer the description of the original building described in the policy, renders the policy void. *Harris v. Royal Canadian Ins. Co.*, 211.
11. Where the policy provides that, in case of loss the holders shall state under oath that the property was contained in the building described in the policy, the failure to make such statement will defeat a recovery. *Id.*
12. The fact that defendant received the premium for the whole time would not authorize a recovery, the policy being forfeited by plaintiff's acts. *Id.*
13. Where the replication in reply to a plea that subsequent insurances had been taken out in violation of a condition, sets up notice of such subsequent

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policies, it is not necessary for defendant to prove the existence of such policies. *Warbasse v. Ins. Co.*, 76.

14. Violation of conditions by the insured defeats the policy, though the money, in case of loss, is payable to a third person. *Id.*

15. Certain warranties in the application held to be in the nature of conditions subsequent, and held that a merely technical breach not increasing the risk, would not defeat the policy, but that any substantial breach would. *Copp v. German Amer. Ins. Co.*, 356.

16. A mechanic's lien held to be an incumbrance within the meaning of a warranty against incumbrances, and held that it was error to reject evidence of such an incumbrance under an answer averring incumbrances generally. *Redmon v. Phenix Ins. Co.*, 357.

INTEREST. See DEBTOR AND CREDITOR, 13. EXECUTORS AND ADMINISTRATORS, 3. INSURANCE, 3. LEGACY, 1, 2. TAX, 4. USURY.

1. Is not recoverable in an action for the loss of property destroyed through negligence. *DeSteiger v. The Hannibal & St. Joseph Railroad Co.*, 812.

2. On a debt which is to bear a certain rate of interest until maturity, the same rate is to be allowed after maturity. *Union Ins. for Sav. v. Boston*, 190.

INTOXICATING LIQUORS. See CONSTITUTIONAL LAW, 9.

1. While in interpreting a statute regard should be had to the letter, yet courts should also have regard to the evil sought to be remedied, which in this case was the use of intoxicating liquors as a beverage. *State v. Holmes*, 555.

2. Whatever is generally and popularly known as intoxicating liquor is within the prohibition of the statute; but whatever is generally known as medicine, or an article for toilet, or for culinary purposes, is without the statute, although containing alcohol. *Id.*

3. As to the articles intermediate between these two classes, the question whether they are within or without the statute is for the jury. *Id.*

4. In an action for injury to estate by selling liquor to decedent, the fact that he purchased and drank the liquor does not constitute contributory negligence which will bar recovery. *Weymire v. Wolfe*, 76.

INTOXICATION. See NEGLIGENCE, 20.**JOINT DEBTORS.** See BILLS AND NOTES, 1. INFANT, 5, 6.

Effect of judgment against one of several joint debtors upon right of action against the others. *Note to Kendall v. Hamilton*, 527.

JOINDER OF ACTIONS. See CRIMINAL LAW, 3, 4, 29. TRADE-MARK, 7.**JOINT STOCK COMPANY.** See UNITED STATES COURTS, 8.**JUDGMENT.** See AGENT, 11, 12. ATTORNEY, 4. EQUITY, 16. FOREIGN JUDGMENT. JOINT DEBTORS. HUSBAND AND WIFE, 20. SURETY, 4-6. UNITED STATES COURTS, 19. VARIANCE.

1. Will not be enjoined on the ground that an appeal was prevented by the fraudulent conduct of complainants' own attorney, unless it appears that he was damaged thereby. *Dobbs v. St. Joseph Ins. Co.*, 492.

2. Where delay in entering judgment arises from the act of the court, without laches on the part of the parties, the judgment may be entered *nunc pro tunc*. *Mitchell v. Overman*, 607, and note.

3. It is the duty of the court so to enter its judgment when justice can only be done in that way. *Id.*

JUDICIAL SALE. See DEBTOR AND CREDITOR, 6. EQUITY, 18. GROWING CROPS. PARTITION. RAILROAD, 1. SHERIFF'S SALE. TAX, 10, 11.**JURISDICTION.** See ADMIRALTY, 4, 12, 13. COURTS, 1, 2. NUISANCE, 4. UNITED STATES COURTS, 1-5, 11-13, 17, 18.

Personal service is not always necessary to give a court jurisdiction. Service according to the law of the state where defendant resides is sufficient. *Harriman v. Roberts*, 373.

JUROR AND JURY. See **CRIMINAL LAW**, 5, 6, 15.

1. Objection to a juror will not avail after verdict, without proof affirmatively that it was unknown at the trial. *State v. Bowden*, 357.
2. Juror not disqualified by having read newspaper reports which created impressions that would require evidence to remove. *State v. Greenwade*, 556.
3. An opinion, not so fixed as to prevent a fair consideration of the case, will not render juror incompetent. *State v. Spaulding*, 109.
4. Disqualification based on formation of opinion. *Id.*, note.
5. Whether individual members of a grand jury may be challenged for favor before they are sworn, *quære*? *State v. Hamlin*, 137.
6. Some authorities hold that the expression of an opinion by a grand juror that the accused person is guilty is ground of challenge, but these generally hold that the exception must be taken before the juror is sworn. *Id.*
7. The common law requires grand jurors to be good and lawful freeholders and inhabitants of the county, and a disqualified grand juror may be challenged before indictment found. *Id.*
8. If a disqualification discovered after indictment found, can be taken advantage of, it must be one that is pronounced such by common law or statute and one that absolutely disqualifies. *Id.*
9. Jurors cannot resort to any knowledge which they may have by reason of their familiarity with any special business or occupation. *Craver v. Hornburg*, 764.
10. Verdict may be set aside in criminal case, if the court officer remained in the room during the deliberations of the jury. *People v. Knapp*, 144.
11. **FREEHOLD QUALIFICATIONS OF JURORS**, 436, 497.

LACHES. See **ADMIRALTY**, 10. **CORPORATION**, 11. **JUDGMENT**, 2. **MORTGAGE**, 14.**LANDLORD AND TENANT.** See **DAMAGES**, 4, 5. **FIXTURES**, 7. **HUSBAND AND WIFE**, 41. **MECHANIC'S LIEN**.

1. When the declaration does not allege eviction of the plaintiff by the defendant's grantee, nor the taking of anything from the premises leased, an action on the covenant for quiet enjoyment cannot be maintained. *Ware v. Lithgow*, 357.
2. Recovery for use and occupation of leased premises cannot be had against others than the lessee during the existence of the lease. *Doty v. Gillett*, 410.
3. Surrender of interests in real estate cannot be inferred from non user alone. *Id.*
4. In an action for use and occupation against one of the lessees and a stranger, supported by evidence that the defendants acted as co-partners, the latter may show their actual relation, and that the stranger had agreed to pay what would have been his proportion of the rent under the lease to his co-defendant. *Id.*
5. Whether the rule that the tenant is liable for rent after destruction of the premises is in force in Kansas, *quære*? *Whitaker v. Hawley*, 624.
6. Where real and personal property are leased for a gross rental, the lessee is entitled upon a total destruction by fire, to an abatement of the rent equal to the proportionate rental value of the personalty. *Id.*
7. Where a lease contained a stipulation that the lessee shall insure for the benefit of the lessor, *Held*, that when this provision became operative the agreement to pay rent ceased to have force. *Id.*
8. Where a landlord sends his tenant a permit to remain two years longer free of charge, and the tenant remains without declining the terms, he will be deemed to have accepted them and may be dispossessed without notice to quit. *Hulett v. Nugent*, 212.
9. A creditor of a tenant who is cultivating upon shares, cannot by attachment on growing crops deprive the landlord of his interest. *Atkins v. Womeldorf*, 212.
10. In replevin by a landlord for corn levied on as his tenant's, after the tenant had left the farm, the question whether the tenant had abandoned the farm is for the jury. *Id.*
11. Where a tenant for years holds over after the expiration of his lease the landlord may treat him as a trespasser, or as a tenant for another year. *Clinton Wire Cloth Co. v. Gardner*, 701.

LARCENY. See CRIMINAL LAW, VII.

LEASE. See LANDLORD AND TENANT, 2, 7, 11.

LEGACY.

1. Exceptions to rule that interest does not commence to run until the expiration of a year enumerated. *Welsh v. Brown*, 812.
2. A legacy of a specific sum, the interest payable to one for life with remainder to another, is not an exception to such rule. *Id*

LIBEL.

1. Declaration need not aver that the publication was made to any person; it is enough to aver a publication in a newspaper. *Sproul v. Pillsbury*, 813.
2. On demurrer to a declaration for libel, the words must be construed in the sense imputed to them by the plaintiff. *Feder v. Herrick*, 701.
3. Words having a tendency to bring a person into ridicule, hatred or contempt, are actionable if written or published. *Id*.
4. Caution against imputing in the pleading a meaning to words which the facts will not sustain. *Id*.

LICENSE. See MUNICIPAL CORPORATION, 22, 24.

LIEN. See ATTORNEY, 3. MECHANIC'S LIEN. MORTGAGE, 6, 7. VENDOR AND VENDEE, 1.

LIMITATIONS, STATUTE OF. See CONSTITUTIONAL LAW, 7, 8. DAMAGES

5. EQUITY, 5. HUSBAND AND WIFE, 15, 27, 28. TAX, 6.
1. In actions for relief for fraud or mistake, the cause of action does not accrue until discovery. *City of Louisville v. Anderson*, 687.
2. Does not run against each item of open mutual accounts, but only against the balance due, from the date of the last proper credit. *Waffle v. Short*, 619.
3. The words "I think I see my way clear to pay you the \$200 and interest I owe you. * * * I am in hopes another two years will enable me, from my present income, to clear off all pressing debts. * * * Rest assured that not a day of pecuniary freedom will pass over my head without your hearing from me," held not sufficient to prevent the bar of the statute. *Pierce v. Seymour*, 493.
4. To prevent the bar of the statute, credits endorsed on a note must be shown to have been made at a time when it was against the interest of the holder to make them, or to have been made with the consent of the payor. *Goddard v. Williamson*, 492.
5. Where a surety procures a payment to be made out of the funds of the principal, such payment has the same effect to arrest the running of the statute as a payment by the surety himself. *McConnell v. Merrill*, 702.
6. Debt barred by, cannot be revived in Wisconsin except by an unqualified promise to pay in writing signed by the debtor. *Pierce v. Seymour*, 763.
7. Entry of owner upon part of tract stops the running of the statute in favor of an intruder, except as to portion in latter's actual possession. *Hunnicut v. Peyton*, 76.

LUNATIC. See CRIMINAL LAW, 23.

1. An exchange of property by a lunatic whose lunacy is apparent, is of no validity, and a subsequently appointed guardian may recover back the lunatic's property without tendering that received by him. *Haley v. Troester*, 418.
2. Grantor in deed may avoid it by proof of his insanity, and offer to put grantee *in statu quo*, is not a condition precedent. *Crauford v. Scovel*, 61. But see note to *Id*. 65.
3. Whether the grantee can recover the consideration paid depends upon the circumstances of the case. *Id*.
4. The lunatic in such case may sue in his own name and not by committee. *Id*.

MAIL. See EQUITY, 12.

1. Where time of presenting claim to assignee for creditors is limited by statute, the mere act of mailing such claim in time to reach the assignee, is not

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a sufficient presentment if the notice is accidentally delayed in the mail beyond the time limited. *Ellison v. Lindsley*, 338.

2. Law as to sending notices by mail. *Id.* *Note.*

MALICIOUS PROSECUTION.

1. Does not lie unless there has been both malicious use of, and absence of probable cause for, the legal process. *Eberly v. Rupp*, 77.

2. It cannot be founded on the use of a writ of estrepement. *Id.*

3. No defence to show that the affidavit made by the prosecutor was insufficient legally to authorize the arrest. *Stocking v. Howard*, 813.

4. In an action for false imprisonment, an answer justifying under an order of arrest is insufficient, if by such answer it appears that the affidavit on which the order was granted did not state any one of the grounds required by statute to be stated. *Hauss v. Koldar*, 625.

MANDAMUS. See **MUNICIPAL CORPORATION**, 3. **SCHOOL**, 1. **U. S. COURTS**, 10.

1. Should not be granted to compel levy of tax to pay bonds whose validity is contested, until the relator has established his right in an action at law. *State v. Mayor, &c., of Manitowoc*, 625.

2. Will not be issued to an inferior tribunal to reverse its decision, refusing a motion for an attachment against a witness who has disobeyed a subpoena duces tecum. *Ex parte Burtis*, 556.

MARSHALLING OF ASSETS. See **EQUITY**, 8. **MORTGAGE**, 7. **PARTNERSHIP**, 9, 10, 22-24.**MASTER AND SERVANT.**

1. Action lies by employer against third person for procuring breach of contract for personal service, even though the parties do not stand in the strict relation of master and servant. *Bowen v. Hall*, 578.

2. Remedies of master against person enticing away servant. *Id.* *Note.*

3. A servant is liable to a fellow-servant for injury caused by the former's negligence in leaving tools in a dangerous position. *Osborne v. Morgan*, 399.

4. In suit by servant against a master for injuries caused by incompetency of fellow-servant, proof of such incompetency does not impose on defendant the burden of proving that he used ordinary care in the selection of the servant. *Murphy v. St. Louis & I. M. R. Co.*, 212.

5. The fact that the duties of a railroad employee were to direct and control assistant brakemen at a particular yard, does not constitute him a vice-principal so as to make the company liable for his negligence towards one of the assistant brakemen. *Rains v. St. Louis I. M. & S. Railroad Co.*, 139.

6. A master must use reasonable care to provide safe implements and keep them in good order. *Porter v. Hannibal & St. Joseph Railroad Co.*, 139.

7. A servant entering into service, knowing of defects in machinery, takes the risk. *Id.*

8. He is not bound to search for latent defects, but may presume that the machinery is safe. *Id.*

9. In case of a patent defect his opportunity to know will be held as knowledge. *Id.*

10. If the servant of a railroad appointed to keep the track in repair ought to know of its condition, knowledge is imputable to the company. *Id.*

11. Master bound to renew perishable instruments without notice from the servant, and is liable to latter for injury caused by a failure so to do. *Baker v. Allegheny Valley Railroad Co.*, 724.

12. Declarations as to the defect made immediately after the accident by a delegate of the master are not binding, unless accompanied by an admission of previous knowledge. *Id.*

13. Liability of master for injuries to servant caused by the master's neglect. *Id.*, *note.*

MECHANIC'S LIEN. See **FIXTURE**, 2. **INSURANCE**, 16. **RECEIVER**, 2, 3.

The written consent of the owner made necessary by statute to bind the land for repairs by the tenant, must be absolute in its terms, and will not be suf-

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sufficient if it provides that the repairs shall not be at the expense of the owner. *Hervey v. Gay*, 140.

MERGER. See FOREIGN JUDGMENT, 1. MORTGAGE, 6.

MESNE PROFITS.

Board of trustees using church property for church purposes only, and allowing the congregation to worship therein, are not liable for use and occupation pending litigation with contesting board whose right is finally established. *Boulden v. Alexander*, 138.

MINES AND MINING. See EQUITY, 14, 15.

MISTAKE. See AMENDMENT, 3. EQUITY, 10-12.

MORTGAGE. See ASSUMPSIT, 6. DAMAGES, 2, 3. DEBTOR AND CREDITOR, 12, 14, 19. DURESS, 1, 2. ESTOPPEL, 2, 3. GROWING CROPS. NAME, 3. NOTICE, 1, 4. TRUST, 2. USURY, 5.

I. Of Chattels.

1. When the mortgagee of personal property sells it, not as his own but held by him as mortgagee, he does not warrant the title. *Harris v. Lynn*, 493.

2. The mortgagee may sell his own and the mortgagor's interest in the property with the consent of the mortgagor, without giving public notice. *Id.*

3. And when the mortgage provides that he may sell the property at public or private sale, no notice is required. *Id.*

II. Of Realty.

4. The purchase of the equity of redemption by the mortgagee, will be upheld if fair. *Amos v. Livingston*, 763.

5. A deed of lands with a clause of redemption is a mortgage. *Vliet v. Young*, 763.

6. The foreclosure of a mortgage merges the cause of action in the judgment, but not the mortgage lien. *Evansville Gas-Light Co. v. Indiana*, 676, and note.

7. Where the mortgagor has made several conveyances to different persons, and one of the tracts so conveyed has been freed from the mortgage-lien, it will not be decreed upon foreclosure, that the remaining tracts be sold in the inverse order of the dates of the conveyances. *Id.*

8. Where pending a foreclosure suit another creditor obtains judgment, the mortgagee is not bound to make such creditor a party, even though by law the lien of the judgment related back to a time prior to the foreclosure suit. *Stout v. Lye*, 625.

9. Mortgage to secure negotiable note passes to the endorsee of the note, and the latter is not affected by subsequent payments to the endorser, even though he has not given notice to the mortgagor nor recorded his assignment. *Burhaus v. Hutcheson*, 551.

10. A foreclosure deed to the mortgagee gives him the same estate as a foreclosure of the equity of redemption. *Ruggles v. First Nat. Bank of Centreville*, 493.

11. Growing crops pass under foreclosure deed, and the court may perhaps provide for their preservation until possession is given to the purchaser. *Id.*

12. Second mortgagee is entitled to the benefit of a provision in the first mortgage that a power of sale should not be exercised without notice to the mortgagor or his assigns, and may sue for the breach thereof. *Hoole v. Smith*, 813.

13. On bill to have a deed declared a mortgage, the proof must be clear and satisfactory. *Maher v. Farwell*, 280.

14. Long delay in filing such bill will bar complainant's rights. *Id.*

15. When given and received for a fraudulent purpose is void, although founded on consideration. *Schmidt v. Opie*, 278.

16. Mortgagees having notice of facts enough to put a prudent man upon inquiry, are bound to examine the records before releasing portions of the premises. *Dewey v. Ingersoll*, 140.

17. Delivery of contract for purchase of land by the purchaser, to one as

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indemnity in becoming guarantor for the purchaser, without any written assignment thereof, constitutes an equitable mortgage. *Allen v. Woodruff*, 77.

18. The only effect of a written assignment is to constitute constructive notice if recorded. *Id.*

MUNICIPAL BONDS. See **EXECUTOR**, 1. **MANDAMUS**, 1. **MUNICIPAL CORPORATION**, 9.

1. In suit upon coupons of county bonds the controlling question is whether there was authority in law for issuing the bonds. *Wells v. Board of Supervisors*, 212.

2. Power to issue bonds for municipal subscription to a railroad must be given in express terms or by necessary implication. *Id.*

3. Where a statute authorizing a county to create a new liability provides a special way for its discharge, that way is exclusive. *Id.*

4. Legislature may authorize municipality to issue bonds for debt previously incurred for street improvement without legal authority. *Mutual Benefit Life Ins. Co. v. City of Elizabeth*, 213.

5. A bond containing a general obligation to pay cannot, by implication, be converted into a promise to pay out of a particular fund. *Id.*

6. After a county has issued new bonds, in place of bonds issued in aid of a railroad under a valid law, it is estopped from setting up an irregularity in the calling of the election at which the vote was taken authorizing the issue of the bonds. *County of Jasper v. Ballou*, 556.

7. *Bonâ fide* purchaser of bonds fraudulently antedated, to avoid registration statute, can recover the purchase-money from the municipality; and the fact that such bonds contain provisions for the payment of illegal interest will not bar such recovery. *City of Louisiana v. Wood*, 419.

8. A general power to borrow money, conferred by the charter of a city, is not repealed by a statute providing for the refunding of its debt and the issue of registered bonds. *Id.*

MUNICIPAL CORPORATION. See **ACTION**, 4. **CONSTITUTIONAL LAW**, 12. **CRIMINAL LAW**, 26. **MUNICIPAL BONDS**. **NEGLIGENCE**, 4, 7. **NEGOTIABLE INSTRUMENTS**, 1, 2. **OFFICE**, 1. **ORDINANCE**. **PAUPER**. **WATERS AND WATERCOURSES**, 4-6.

1. The private property of its citizens cannot be subjected to the payment of the corporate debt except by taxation. *Lyon v. Elizabeth*, 702.

2. Property used by it in the exercise of its functions of government cannot be taken in execution. *Id.*

3. Claims of creditors may be enforced by judgment and mandamus. *Id.*

4. Property held by a city for public uses cannot be subjected to the payment of its debts. Upon the repeal of the city's charter, such property passes under the immediate control of the state. *Merrivether v. Garrett*, 280.

5. The private property of citizens cannot be subjected to the payment of the city's debts except through taxation. *Id.*

6. The power of taxation cannot be exercised otherwise than under the authority of the legislature. *Id.*

7. Taxes levied before the repeal of a city's charter cannot be collected by a receiver appointed at the instance of creditors. *Id.*

8. *Quere*, whether taxes levied in obedience to contract obligations, or under judicial direction, can be collected by a receiver? *Id.*

9. When a municipal council is authorized to issue bonds when certain facts exist, and such facts are exclusively within its knowledge, it is the judge thereof, and a purchaser can rely on its statements in relation thereto contained in the bonds. *Id.*

10. An ordinance imposing a greater penalty for its violation than is authorized by charter is void. *State v. Long Branch Com.*, 213.

11. An authorization by city councils after a penalty is incurred for violation of an ordinance, is no defence in an action for the penalty. *State v. Fire Department*, 815.

12. Where the charter commits the decision of a matter to the common council, such decision may be made by resolution. *Burlington v. Dennison*, 140.

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13. The appointment of a committee to make a purchase, is plenary evidence of the decision of the council; the passage of an ordinance is not required. *Burlington v. Dennison*, 140.

14. Council may delegate power to a committee whose contract will bind the corporation. *Id.*

15. Approval of mayor to proceedings of council is essential to their validity only by special requirement of charter. *Id.*

16. Not liable for excavation made and paid for by its officers without the authority of the city councils. *Pierce v. Tripp*, 702.

17. Liable for damage by construction of street according to plan prescribed by ordinance, only when the injury results from defective execution of, and not from defects in the plan. *Foster v. St. Louis*, 140.

18. In an action against a city for damages caused by defect in street, it is sufficient proof of notice of such defect to show that either a councilman or the street commissioner knew of it a reasonable time previous to the injury. *Logansport v. Justice*, 796, and note.

19. A city, in grading its streets and constructing gutters, is not bound to provide against extraordinary storms. *Allen v. City of Chippewa Falls*, 556.

20. Under statute authorizing license of hackmen, omnibus drivers "and others pursuing like occupations," a city may require street railways to take out license for cars. *Allerton v. City of Chicago*, 473, and note.

21. The police power is inherent in a municipal corporation, and cannot be transferred. *Id.*

22. Power to "regulate the management" of a business includes the power to require a license for carrying it on. *Id.*

23. The distinction between the taxing and the police power discussed. *Id.*

24. Power to regulate and license a business confers no power to impose a tax thereon. *State v. Long Branch Com.*, 77.

25. May make only such regulations as to business as have relation to the public health, morals and order. *Id.*

26. In the absence of express statutory authority, a city has no power to authorize the use of steam motors upon its streets, and the grant of such authority is negligence which will render the city liable for damage caused thereby. *Stanley v. City of Davenport*, 556.

27. The fact that the action of the city council in granting such right was without authority, would not protect the city from liability. *Id.*

28. A section of a city's charter provided that the city council should have power to levy taxes not exceeding one and one-half per cent. per annum of the taxable property. Another section empowered the courts, upon failure of the council to make provision for a debt, to make such decrees as might be necessary for levying taxes therefor not exceeding one per cent. per annum. *Held*, that notwithstanding the limit imposed by the former section had been reached, the courts could, under the latter section, decree the levy of a tax to pay a judgment debt. *City of Louisiana v. United States*, 625.

29. A state constitution provided, that the legislature should not authorize a city to become stockholder in a corporation without the assent of two-thirds of the voters. Subsequently, a charter was granted to the city providing, that it should have power to subscribe for stock upon the vote of a majority of the taxpayers. *Held*, that the charter gave no power to subscribe for stock, but only added an additional restriction to that imposed by the constitution. *Allen v. Louisiana*, 488.

30. The fact that two-thirds of the voters gave their assent would not validate a subscription. *Id.*

MURDER. See **CRIMINAL LAW**, VIII.**NAME.** See **EQUITY**, 6, 7.

1. Under the New Jersey Practice Act initials cannot be used for Christian names, except in cases of parties described by initial letters in bills, notes or other instruments. *State v. Richards*, 213.

2. Elbertson and Elbertson being *idem sonans*, the use of one for the other in a writ is an immaterial variance. *Id.*

NAME.

3. A statutory foreclosure is not invalidated by a change in the name and removal of the office of the newspaper in which the advertisement is published. *Perkins v. Keller*, 419.

NATIONAL BANK.

1. The demand and receipt by, of usurious interest, from endorsers upon notes discounted by it, does not avoid a contract of guaranty to the bank on such notes. *Lazear v. Bank*, 280.
2. Cannot use its funds in purchasing notes. *Id.*
3. Where a guaranty is given to it for all liabilities of certain parties, and it brings suit against the guarantor, the question whether the money was parted with on the faith of the guaranty is exclusively for the jury. *Id.*
4. Only such penalties can be enforced against national banks for usury, as are provided in the National Bank Act. *National Bank of Winterset v. Eyre*, 79.
5. Defendant may set up plea of usury against national bank in the state courts. *Id.*
6. Renewal notes including usury are affected thereby, and cannot be purged thereof by having the amount credited as a payment. *Id.*
7. Maker of non-negotiable note discounted with national bank, cannot defend on the ground that the bank could not deal in such paper. *Bank v. Gillilan*, 419.

NEGLIGENCE. See ADMIRALTY, 1-3, 5. CANAL. COMMON CARRIER, 5-7, 10, 12, 14. CORPORATION, 5. INTEREST, 1. INTOXICATING LIQUORS, 4. MASTER AND SERVANT, 3-13. MUNICIPAL CORPORATION, 16, 17, 19, 26, 27. RAILROAD, 5, 6, 11-14.

1. Where a bank holding a draft for collection accompanied by a bill of lading for grain, deposits the grain in the drawee's elevator before payment of the draft, there is evidence of negligence for the jury in an action against the bank on the subsequent insolvency of the drawee. *Milwaukee National Bank v. City Bank*, 557.
2. In an action for an injury arising from negligence, the burden is on the plaintiff to show that he was exercising ordinary care. *Benson v. Titcomb*, 813.
3. Certain evidence held not to show negligence in street-car driver, or to entitle plaintiff to recover for the killing of his child by the car. *Maschek v. St. Louis Railroad Co.*, 214.
4. If injury on highway is the joint product of the plaintiff's lack of prudence and the town's negligence there can be no recovery. *Bovee v. Danville*, 761.
5. The burden is on the plaintiff to show that he contributed nothing towards the accident. *Id.*
6. Injured feelings consequent upon a miscarriage caused by an accident, not part of the pain naturally attending it, are too remote to be considered. *Id.*
7. Town liable for negligently allowing object calculated to frighten horses to remain in the highway. *Bennett v. Fijfield*, 702.
8. Suit was brought by the party injured against the person leaving such object in the highway, and judgment recovered. The defendant was discharged under the Bankrupt Act, and plaintiff then sued the town. *Held*, that the action could be sustained. *Id.*
9. Whether the owner of a stack of hay, burned by sparks from a locomotive, is guilty of contributory negligence in stacking the hay in proximity to the track is a question of fact for the jury, and not a question of law for the court. *C., E., S. & G. Railroad v. Owen*, 628.
10. In an action for personal injury caused by a railroad train, where there are qualifying circumstances, the court is warranted in submitting to the jury the question whether plaintiff was injured by his own negligence or by that of the railroad company. *Langan v. St. L., I. & S. Railroad Co.*, 626.
11. Negligence is not imputable to a person for failing to look out for danger when, under the surrounding circumstances, he had no reason to suspect any. *Id.*
12. In action against the hirer of a horse, the jury found specially that the horse was a safe one, but that defendant was notified by the plaintiff when he

NEGLIGENCE.

hired him that he was unsafe, and that defendant's negligence consisted in his not having hold of the lines when he attempted to get into the buggy. *Held*, that the court could not say, as matter of law, that defendant was not negligent. *Monroe v. Lattin*, 626.

13. Proper mode of measuring the damages to the horse and carriage in such case explained. *Id.*

14. Failure of parent to keep two-year-old child off of track is not, *per se*, contributory negligence. *Smith v. Atchison, T. & S. Railroad Co.*, 559.

15. Letting a coal-car run down a steep grade without any one in charge, held, under the circumstances of the case, evidence of negligence to be submitted to the jury. *Id.*

16. Railroad company held responsible for negligent running of car by a mining company which, by permission of the railroad company, ran cars over a switch-track belonging to the railroad company. *Id.*

17. In an action against a railroad company for negligence, it is error to give an instruction to the jury which makes the conduct of the plaintiff the only condition upon which his right of recovery depends, and which virtually says that if the plaintiff was careful and prudent he may recover, whether the defendant was negligent or not. *Atchison, T. & S. Railroad Co. v. Combs*, 559.

18. When the facts are undisputed, the question of negligence is one of law. *McLaury v. City of McGregor*, 556.

19. Where one, while walking upon a five-foot sidewalk, and in the enjoyment of sufficient light and such eyesight as to enable her to discern the limits of the walk, stepped off into a ditch, it was held that she was guilty of contributory negligence. *Id.*

20. Judgment for plaintiff reversed for an instruction that, "the fact of intoxication alone" would not "prove contributory negligence," unless the proof showed such a degree of intoxication that "imbecility would begin to affect" the intoxicated person. *Fitzgerald v. Town of Weston*, 493.

21. Omission by railroad company of statutory signal, will not relieve a person from the duty to look and listen. *Pennsylvania Railroad Co. v. Righter*, 142.

22. Where defendant's neglect consisted in the maintenance of a structure, the danger of which was obvious to the senses long before the accident, he was held not liable. *Rains v. St. Louis, I., M. & S. Railroad Co.*, 141.

23. Failure to protect pier by piles not such contributory negligence as will bar recovery against vessel for negligently injuring pier. *Toll-bridge Co. v. Langrell*, 77.

24. Finding that piles would have prevented the injury, is not equivalent to finding that ordinary care required them to be maintained. *Id.* 78.

25. Contributory negligence is good defence, unless slight in comparison with defendant's negligence, which was gross. Mere preponderance in degree will not make defendant liable. *Chicago & Northwestern Railway Co. v. Dimick*, 78; *Pennsylvania Railroad Co. v. Righter*, 142.

26. One approaching a railroad must look and listen. *Id.*

27. CONTRIBUTORY NEGLIGENCE BY PERSONS WITH DEFECTIVE SENSES. 507.

NON-NEGOTIABLE INSTRUMENT. See BILLS AND NOTES.

1. County warrant is not negotiable, and the county may set off against a *bona fide* purchaser for value a claim held by it against the payee. *Wall v. Monroe County*, 627.

2. Nor is the county estopped by the fact that the warrant is a re-issue, and that at the time of the re-issue the alleged set-off was known to exist. *Id.*

3. A blank endorsement of a non-negotiable certificate of deposit by the payee, accompanied by delivery, will enable the holder to make a pledge of the certificate to an innocent party, without reference to the equities between himself and the payee. *International Bank v. German Bank*, 141.

4. A certificate had written across its face, "This certificate is subject to any subsequent claim for collection or any other fees arising out of the disbursement of the legacy of which this money is part of proceeds." The bank which issued the certificate not asserting any rights under this stipulation, *held*, that as between the other parties, it did not affect the operation of the foregoing rule. *Id.*

NEGOTIABLE INSTRUMENT.

5. Change of number in a Bank of England note is not such a material alteration as will defeat the right of a *bona fide* purchaser. *Suffell v. Bank of England*, 758.

NEW TRIAL. See JUROR, 1.

1. When a party is surprised by unexpected evidence he should at once move for delay, and not await the chances of a verdict. *Benson v. Titcomb*, 813.

2. A party cannot complain of an obscure instruction to the jury, unless he has moved for an explanation or further instruction. *Logansport v. Justice*, 796.

3. Where one instruction is erroneous, but it is clear upon all the instructions that the jury were not misled, a new trial will be refused. *Id.*

4. Where the verdict is not in accordance with the rule that a *bona fide* purchaser of negotiable paper before maturity takes it free of equities, a new trial will be granted. *Burrill v. Parsons*, 352.

NOTICE. See ACTION, 10. AGENT, 9. ATTORNEY, 6. BANKRUPTCY, 4. DEED, 8. 10. ESTOPPEL, 2. 3. MAIL, 2. MUNICIPAL CORPORATION, 18. PARTNERSHIP, 17. POSSESSION, 1, 2. VENDOR AND VENDEE, 4.

1. The record of a mortgage with a general description of the indebtedness, is constructive notice. *Passumpsic Saving Bank v. First National Bank*, 627.

2. Party put on inquiry must inquire in the proper direction and use due diligence, but this is the limit of his liability. *Id.*

3. What will constitute reasonable inquiry must vary with the circumstances of each case. *Id.*

4. Second mortgagee finding record of mortgage to retiring partner for the "balance which should be due him on the purchase of said property," and being on inquiry told by both mortgagor and mortgagee that nothing was due, is not chargeable with notice of notes given to the mortgagee, but not described in the mortgage except as above. *Id.*

NUISANCE.

1. Where the damage is irreparable or continuing, an injunction will be granted without a previous determination of complainant's rights by a jury. *Pennsylvania Lead Co.'s Appeal*, 649.

2. Lead smelting works in a fertile district enjoined, notwithstanding their extensive cost and public benefit. *Id.*

3. Failure of adjoining owner to protest against erection of such works does not estop him from applying for injunction. *Id.*

4. Courts of Common Pleas of Pennsylvania are clothed with equity powers to restrain nuisance, notwithstanding that there is a remedy by indictment or by action at law. *Id.*

5. What constitutes a nuisance and what are the remedies therefor. *Id.*, note.

6. Owner of house allowing brothel to be maintained there, is liable to owner of adjoining premises for the special damage, including that caused by the fact that other houses of like character were opened in the neighborhood as the natural result of defendant's act. *Givens v. Studdiford*, 420.

7. In ascertaining the damage, all the circumstances should be considered, and the measure is the actual depreciation in the selling value of the property and the loss of rent. *Id.*

8. Legislative authority to a corporation to do a work for its own profit, does not authorize it to use, at whatever hazard to others, dangerous materials, even though necessary to the convenient prosecution of the work. *McAndrews v. Colterd*, 141.

9. It will be liable for injury, although no negligence in the work be proved and liable for actual damages, though it has done the work in the most careful manner. *Id.*

10. Where a nuisance is a public one, no degree of care will relieve the party from liability. *Id.*

11. All persons who are concerned directly or indirectly in a public nuisance, are responsible for injuries to an innocent person. *Jenne v. Sutton*, 628.

12. A permanent building upon a pavement in a city is *per se* a nuisance. *Indiana v. Burdette*, 342, and *note*.

OFFICE AND OFFICER. See AUCTIONEER. BOND, 1-4. COSTS, 5. EVIDENCE, 6. SURETY, 4, 5, 7.

1. An appointment to, and acceptance of, a municipal office, does not constitute such a contract as will obstruct a vacation of the office. *Inhabitants of Burlington v. Estlow*, 702.

2. An election to a public office, secured by means of an offer to perform the duties for less than the legal fees, is void. *State v. Collier*, 412.

3. After a public officer has served through his term, neither he nor his sureties can escape liability on his bond on the ground of the illegality of his election. *Boone County v. Jones*, 557.

4. The sureties upon such bond can make no defence not available to the principal. *Id.*

5. The rule as to the validation of the acts of *de facto* officers is one of policy, and may be applied not only where there is no *de jure* officer, but where the legal office itself no longer exists. *Adams v. Lindell*, 557.

ORDER. See ACCEPTANCE. ACTION, 2. SUNDAY, 6.

ORDINANCE. See MUNICIPAL CORPORATION, 10, 11. SUNDAY, 7, 8.

1. Where a charter requires that all ordinances shall be published, such publication is a condition precedent to their enforcement. *Ormsby v. Louisville*, 269.

2. An ordinance which occupies the entire field of a former one, will repeal such former one by implication. *Inhabitants of Burlington v. Estlow*, 702.

PARENT AND CHILD. See CONTRACT, 3. DEBTOR AND CREDITOR, 7, 9, 15, 18, 19. NEGLIGENCE, 14. SEDUCTION, 1.

1. Where the circumstances render it proper, a court may make an allowance to the parent from the child's property to defray the expense of its maintenance, *Gerdes v. Weiser*, 557.

2. Where a man receives into his family the child of his wife by a former marriage, he stands in *loco parentis* to such child, and is bound for its support. *Id.*

3. Decree of divorce, committing child to the custody of one of its parents does not prevent a court from subsequently on *habeas corpus* committing it to the custody of a person other than a parent. *In re Bart*, 494.

PARTIES. See MORTGAGE, 8.

PARTITION. See WAX, 4, 6.

Partition sale after expiration of term without renewal of order is void. *Hughes v. Hughes*, 494.

PARTNERSHIP. See AGENT, 14. EVIDENCE, 2. LANDLORD AND TENANT, 4.

1. Two persons buying a threshing machine and giving their joint note therefor, under an agreement to share equally the profits and losses of its work, are partners. *Aultman v. Fuller*, 214.

2. A separate creditor levied on and sold firm property, without bringing an action to determine defendant's interest as provided by the Iowa code. *Held*, that the sale was invalid as against a subsequent execution-creditor of the firm. *Id.*

3. In an action for dissolution because of disputes between the partners, the dissolution will not be made retrospective. *Lyon v. Tweedell*, 813.

4. Assumpsit by one partner against another for balance due, will not be sustained where the declaration does not allege an account stated, or show that the affairs of the firm have been settled. *Dowling v. Clarke*, 628.

5. A contract between partners which can be enforced without a general accounting may be enforced at law. *Edwards v. Remington*, 357.

6. Partnership lands have in equity the character of personality. *Godfrey v. White*, 494.

7. Proceedings between partners for accounting may be carried on where the parties live, irrespective of the location of the partnership lands. *Id.*

8. Testator may authorize the continuance of a partnership, without subjecting any more of his property to the vicissitudes of the business, than what was embarked in it at the time of his death, and dividends honestly paid to legatees

PARTNERSHIP.

cannot be recovered back upon the subsequent bankruptcy of the firm. *Jones v. Walker*, 494.

9. Under assignments for creditors, partnership creditors are as to individual assets postponed to individual creditors. *Davis v. Howell*, 461.

10. Respective rights of creditors against individual and partnership estates. *Id.*, note.

11. One partner cannot admit third party to the firm without the consent of the copartners. *Love v. Payne*, 535, and note.

12. By receiving such third party as an acting partner, the other partners may so far ratify the contract as to make him a member of the firm. *Id.*

13. One partner cannot without special authority bind the firm by deed. *Wulsh v. Lennon*, 420.

14. But he may borrow money for the firm at any legal rate of interest and bind his partners by any instrument evidencing such loan. *Id.*

15. Such instrument, though under seal, may be used as evidence of the loan. *Id.*

16. Admission of one partner relative to partnership concerns, binds the others. *Harryman v. Roberts*, 374.

17. Retiring partner not bound to give notice to the successor in business of a creditor with whom the firm has had dealings. *Richardson v. Snider*, 393, and note.

18. A new firm cannot be bound without the consent of all its members for the debts of the old. *McLinden v. Wentworth*, 358.

19. One partner cannot bind the firm for money borrowed by him to pay for his share of the capital. *Id.*

20. A firm is not liable for an individual debt of one partner, although the consideration goes into the firm business if, as between the partners, the debt ought to be paid by the contracting partner. *Id.*

21. Secret agreement between partners cannot be set up as a defence to a suit on a firm endorsement executed by one partner for the firm's benefit. *Andrews v. Congar*, 328.

22. Creditors of partner who has mortgaged his private property for a partnership debt, which is also secured by a mortgage on the partnership property, are entitled to be subrogated to the rights of the mortgagee against the partnership property. *Bank of Royalton v. Cushing*, 813.

23. As between a subsequent mortgagee of the partner's private property, who, having attached the other partner's interest, and having purchased the original mortgage, foreclosed the one on the partnership property, and an attaching creditor of the partnership property, who, having paid the decree in the foreclosure suit, brings his bill to foreclose both mortgages, such creditor is not entitled to be subrogated. *Id.*

24. Doctrine of subrogation rests in justice, not contract; it applies to sureties, and not to a stranger, nor, ordinarily, a levying creditor. *Id.*

PART OWNER. See **VESSEL**.

PASSENGER. See **COMMON CARRIER**, 5-14. **RAILROAD**, 11.

PATENT.

1. Claims of re-issued patent will be construed with reference to the state of the art at the date of the original invention, and the limitation of the invention in the original patent to a machine of specific construction. *Swain County v. Ladd*, 281.

2. In a clear case of mistake the patent may be enlarged by re-issue, but this is the exception not the rule. *Id.*

PAUPER.

The aid furnished by a county to a pauper is a charity to which he is entitled, and the county cannot recover from his estate. *Bremer County v. Curtis*, 558.

PAYMENT. See **CONTRACT**, 14. **SUNDAY**, 10. **TAXATION**, 1, 3.

1. When made under protest upon compulsion by legal process is not voluntary, and to constitute compulsion it is sufficient if the officer manifests an intention to enforce collection by seizure and sale of the payer's property. *Parcher v. Marathon County*, 764.

PAYMENT.

2. Money voluntarily paid to subordinate officer to procure release of goods seized, cannot be recovered from the United States. *Clark v. United States*, 359.

3. Voluntary payment cannot be recovered back simply because paid to avoid controversy with the United States. *White v. United States*, 424.

PILOT. See **ADMIRALTY**, 14.

PLEADING. See **AGENT**, 15. **CRIMINAL LAW**, 3, 4, 10, 12, 13. **DURESS**, 2. **INSURANCE**, 13. **LIBEL**, 1, 2. **SLANDER**, 2. **TRADE-MARK**, 6.

1. There is a distinction between the pleas of a want of consideration and of a failure of consideration; the latter necessarily admits the original existence of a consideration and involves an assumption of the burden of proof. *Denege v. Bayly*, 420.

2. Averment in suit upon bills of exchange that the plaintiffs "are successors in and to (payee's) business, and, as such, are the legal and *bona fide* holders of the bills of exchange," is not sufficient allegation of title. *Richardson v. Snider*, 393, and note.

3. A plea which, undertaking to answer the whole declaration answers only a part, is bad. *Willing v. Bozman*, 358.

4. A count charging one of two persons with trespass, without designating which, is bad. *Id.*

5. Where a general demurrer to pleas is sustained, the defendants are not entitled to judgment because one of several counts of the declaration is defective. *Id.*

6. In pleading at common law, facts must be given showing compliance with a condition precedent, a general averment of compliance is insufficient. *Ormsby v. Louisville*, 269.

7. Not duplicity to allege in a single count various damage arising from one wrongful act. *Wolfe v. Beecher Manufacturing Co.*, 78.

8. In declaration for injury to house alleged to be owned and occupied by plaintiff, he cannot recover for injury to house of which he has only the possession and not the title. *Id.*

9. And this although he had conveyed the title to a third person without consideration, for the purpose of evading an attachment. *Id.*

10. Even if this had constituted an equitable title, he could not have recovered in his own name for injuries to the freehold. *Id.*

11. The court should have explained to the jury that they were not to give damages for injury to the freehold, even though counsel had disclaimed any damages therefor. *Id.*

PLEDGE. See **EXECUTORS AND ADMINISTRATORS**, 4.

POSSESSION. See **DEBTOR AND CREDITOR**, 4-10. **EJECTMENT.** **ESTOPPEL**, 3. **LIMITATIONS, STATUTE OF**, 7.

1. One who has knowledge that land is in the actual possession of another, is thereby put upon inquiry. *Martin v. Jones*, 420.

2. The possession of land by a person at the time of his death is notice of the interests of his heirs, to a subsequent purchaser. *McVey v. McQuality*, 214.

POWER.

1. Exercise of, will not be enforced by a court of equity for the benefit of creditors of the donee. *Gilman v. Bell*, 703.

2. The intention to execute, must appear by a reference in the instrument to the power or to the subject of it, or from the fact that the instrument would be inoperative without it. *Fbos v. Scarf*, 814.

PRACTICE. See **AMENDMENT**, 1, 4. **CRIMINAL LAW**, 14. **ERRORS AND APPEALS**, 2, 4, 8, 12, 13, 24. **EVIDENCE**, 10, 28. **JUDGMENT**, 2. **MORTGAGE**, 8. **U. S. COURTS**, 9, 14, 15, 19.

PRESUMPTION. See **EVIDENCE**, 6, 23, 35. **HUSBAND AND WIFE**, 3.

1. If a person leaves his home and is not heard of for seven years, he is presumed to be dead. The rule does not confine the intelligence to any particular class of persons. *Wentworth v. Wentworth*, 281.

PRESUMPTION.

2. A failure to hear from one who was known to have had a fixed place of residence abroad, would not raise the presumption without inquiry at that place. *Wentworth v. Wentworth*, 281.

PUBLIC POLICY. See **CONTRACT**, 7, 14. **OFFICER**, 2, 5. **SUNDAY**, 1, 3-7, 9, 10.

Contract in consideration of conveyance to railroad for depot, that no other depot should be built by the grantees in the city, is void as against public policy. *Williamson v. C., R. I. & P. Railroad Co.*, 208.

RAILROAD. See **ACTION**, 5, 7, 8. **COMMON CARRIER**, 1-12. **MUNICIPAL CORPORATION**, 20, 26. **NEGLIGENCE**, 3, 9-11, 14-17, 21, 25, 26. **RECEIVER**, 2.

1. Sale under decree of court, of railroad "with its property and franchises," does not pass to the purchaser an immunity of the road from taxation. *East Tennessee, V. & G. Railroad Co. v. Hamblen Co.*, 421.

2. Cannot engage in express business. *Southern Express Co. v. N. C. & St. Louis Railroad Co.*, 590, and note.

3. Must provide facilities for express companies desiring to do business over its road. *Id.*

4. Estopped from discontinuing such facilities to express company which has built up large business over its road. *Id.*

5. Engineer in charge of train has a right to assume, that persons past the age of childhood will heed the usual alarm signals. If, after using them without effect, he uses such means as in his judgment are most advisable, the company is not liable for his failure to use other means which were at hand. *Bell v. Hannibal & St. J. Railroad Co.*, 421.

6. The mere fact that a train was moving at a dangerous rate of speed, will not make the company liable, if the injured person was guilty of contributory negligence. *Id.*

7. A railroad company selling state bonds issued in aid of the road, is estopped from denying the validity of the bonds in a suit to enforce a statutory lien therefor. *Florida Central Railroad Co. v. Schutte*, 558.

8. The part of the statute giving a lien for the money advanced, can be sustained, notwithstanding the unconstitutionality of the part authorizing the issue of state bonds therefor. *Id.*

9. *Bona fide* purchasers of such bonds are not confined in their recovery against the railroad, to the amount paid by them for the bonds. *Id.*

10. Landowner held entitled to damages for whole section of land injured, and not merely for separate quarter through which railroad is constructed. *Kansas City E. & S. Railroad Co. v. Merrill*, 494.

11. One riding on freight train on which passengers are carried is a passenger, although he boarded the train without the knowledge of the conductor and paid no fare, if the conductor, after discovering him, allowed him to remain. *Sherman v. St. Joseph Railroad Co.*, 421.

12. Where a brakeman without the conductor's knowledge, assumed to direct a boy to perform a certain service, and the boy was injured. *Held*, that the company was not liable. *Id.*

13. The youth of one injured may excuse concurring negligence, but cannot supply the place of negligence on the part of the company. *Id.*

14. The company is liable for injury to passenger on freight car, if the rule requiring him to ride in the caboose was not conspicuously posted, but not, if the injury was the result of an attempt on his part to perform an unauthorized service. *Id.*

RATIFICATION. See **AGENT**, 7. **INFANT**, 1-3. **TORT**, 1.

1. A party ratifying a contract is not bound by a separate and distinct part of it, not incident to it or implied, and of which he has no knowledge. *Love v. Payne*, 535, and note.

2. Ratification cannot extend beyond acts fairly and reasonably implied from the nature of the transaction. *Id.*

REAL AND PERSONAL ESTATE. See **FENCE**. **FIXTURE**. **GROWING CROPS**. **PARTNERSHIP**, 6.

RECEIVER. See **ERRORS AND APPEALS**, 10. **MUNICIPAL CORPORATION**, 7.

1. Allowance by the circuit justice of the appeal of a receiver is equivalent to leave by the court to the receiver to take the appeal. *Farlow v. Kelly*, 628.

2. Mechanics' lien creditor of a railroad is not represented by a receiver subsequently appointed, and his lien is not divested by a sale to pay an indebtedness created by the receiver if he was not made a party to the proceedings. *Snow v. Winslow*, 628.

3. In the absence of a showing of some peculiar exigency, such lien would not be displaced by an indebtedness created by the receiver in building an extension to the road. *Id.*

RECORD. See **AGENT**, 9. **BILL OF EXCEPTIONS**, 4. **DEED**, 8. **ESTOPPEL**, 3, 9. **NOTICE**, 1.**RECOUPMENT.** See **SET-OFF**.**REFEREE.** See **ERRORS AND APPEALS**, 2-5. **SALE**, 12.**REFORMATION.** See **EQUITY**, 13. **INSURANCE**, 7.**REMOVAL OF CAUSES.** See **INSURANCE**, 1.

1. Congress has not provided for the removal of a suit in which there is a controversy not wholly between citizens of different states, and to the full and final determination of which one of the necessary parties seeking the removal is a citizen of the same state with one of the parties against whom the removal is asked. *Blake v. McKim*, 483.

2. If the jurisdiction of the federal court depends upon the subject-matter of the controversy, and this is already in its possession, there is no error in its entertaining jurisdiction of the suit upon a transfer by agreement. *Bank v. Winslow*, 281.

3. A state court, before relinquishing its jurisdiction, should be satisfied that the conditions of the Act of Congress have been complied with. *Stone v. Sargent*, 24.

4. The decision of the state court is reviewable ultimately by the United States Supreme Court, but is not subordinate to the opinion of any other federal court. *Id.*

5. The Act of March 3d 1875 does not take away the right of removal, on the ground of prejudice, under sect. 639 Rev. Stat. *Id.*

6. A hearing before an auditor is not a trial within the meaning of the Acts of Congress. *Id.*

7. The law relating to the removal of causes. *Id.*, note.

8. Petition for removal too late, under Acts of Congress of 1866 and 1867, after final decision of the state Supreme Court on the merits, although the cause has been remanded for reference to a master to state an account. *Jifkins v. Sweetser*, 282.

REPLEVIN. See **HUSBAND AND WIFE**, 30.

1. Will lie in state court for property of plaintiff levied on by United States marshal as the property of another under process from federal court. *Heyman v. Covel*, 171.

2. Liability of property in possession of one court to seizure upon process from another. *Id.*, note, 174.

3. Where the vendor in a sale which is illegal, because made on Sunday, secretly retakes the property from the premises of the vendee, the latter may bring replevin against him. *Kinney v. McDermott*, 737.

4. Where grain replevied was threshed and sold by the plaintiff, and upon the trial the ownership was found to be in the defendant, the measure of his recovery on plaintiff's bond was held to be the market value of the grain at the time of the trial, less the cost of threshing and marketing. *Clement v. Duffy*, 629.

5. In Rhode Island, an officer holding a writ of replevin with the statutory bond, will be protected in taking the property described from the defendant and in delivering it to the plaintiff; notwithstanding third parties may claim the property. *Curry v. Johnson*, 629.

6. Where the possession of an officer is not such that he could maintain replevin or trespass, replevin will not lie against him. *Libby v. Murray*, 355.

REPLEVIN.

7. Defendants having entitled themselves to a return of the property pending the action, and having disposed of it, there was no error in permitting plaintiff to amend the complaint by increasing the alleged value of the property. *McKesson v. Sherman*, 358.

8. The pendency of a suit upon a replevin bond will not bar an action of trover against one who received from the plaintiff in replevin the property replevied. *Wyman v. Bowman*, 358.

9. Plaintiff in replevin cannot convey a good title to the property replevied, if he is not actual owner. *Id.*

10. Defendant, after a voluntary dismissal by the plaintiff, may commence an independent action on the bond and recover his damages sustained by the taking of the property, including the value thereof. *Manning v. Manning*, 763.

RESCISSION. See SALE, 6, 10, 11.

REVENUE. See STATUTE, 3.

RIPARIAN RIGHTS. See WATERS AND WATERCOURSES.

SALE. See BAILMENT. DEBTOR AND CREDITOR, 4-10. EVIDENCE, 8. HUSBAND AND WIFE, 29, 30. VENDOR AND VENDEE. WARRANTY, 1, 2.

1. Purchaser of a horse upon condition that it should be used for eight days, and returned if he did not think it suitable, is not liable for the price upon the death of the horse within the eight days. *Elphick v. Barnes*, 240.

2. When purchaser is excused from his obligation on contract of sale or return. *Id.*, note 244.

3. A. took home a horse of B., intending to purchase it if satisfactory, with an understanding that he was to use it by way of trial until a specified time, and then, if not satisfied, bring it back to B., or if too busy for that, to let it stand unused until B. came for it. A. continued to use the horse after the time so fixed, and then refused to buy and offered to return it. *Held*, that this was evidence for the jury on the question whether A., at the time so fixed, had determined to retain the horse, and was therefore liable for the price, but was not conclusive evidence. *Kahn v. Klabrunde*, 142.

4. Condition annexed to a sale of goods delivered to a vendee is binding upon his assignees in insolvency, but not upon his vendees in the regular course of business. *Rogers v. Whitehouse*, 282.

5. It is not essential to the validity of such condition that the vendee should have no right to sell to others. *Id.*

6. The vendor in a conditional sale may, under the terms thereof, retake possession of the chattel for default in payment of an instalment of the price, without tendering back the money already received. *Fleck v. Warner*, 629.

7. Where the acceptance by the vendor of an offer is absolute, the expression of a hope that the vendee will pay more, does not vary the contract. *Phillips v. Moor*, 282.

8. A purchaser desiring to retract an offer on the ground that it was not seasonably accepted, must notify the seller promptly. *Id.*

9. Where the terms are fixed, and everything the seller has to do complete, the contract is absolute without actual payment or delivery, and the property is at the purchaser's risk. *Id.*

10. Where a machine is ordered from a manufacturer for a specific and known purpose, there is an implied warranty of reasonable fitness for such purpose, and the right of the purchaser to rescind is not destroyed either by a written agreement as to the quality of the machine, or by the mere receipt of the machine. *Craver v. Hornburg*, 764.

11. Where goods are to be delivered by instalments, the failure to receive one instalment gives to the vendor the right to rescind. *Honck v. Mulder*, 814.

12. In the absence of fraud, the decision of one, agreed upon between the parties to an executory contract of sale, to determine whether the goods offered conform to the requirements of the contract, is binding. *Nofsinger v. Ring*, 214.

13. A quantity of barrels were sold from a large stock stored in the warehouse of a bailee, who was accustomed to deliver to purchasers upon presenta-

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tion of a bill of sale. He was notified of the sale by both parties, and at the request of the purchaser, to whom a bill of sale had been given, he undertook to keep the barrels safely until called for. But they were not designated nor separated from the rest. *Held*, that there was sufficient delivery to protect the barrels from an execution levy. *Carpenter v. Graham*, 214.

14. A purchaser's delay, in removing merchandise from the charge of a bailee, cannot subject the vendor to the risks of storage. *Id.*

15. Fraudulent representations may be as well by acts or artifices as by positive assertions. *Coyle v. Moses*, 79.

16. A mining company agreed to sell two thousand tons of ore to an iron company and deliver it at a certain point, whence it was taken by rail to the consignees. The contract quantity was delivered, and with more ore of the same kind, was deposited in a pile at the point of delivery; but the consignees directed the railroad company to cease forwarding it for a time, as they had no room for it. They paid in full for the contract quantity, but as they did not finally receive the full amount, they sued the mining company for failure to deliver. *Held*, that they could not recover. *Iron Cliffs Co. v. Buhl*, 215.

SALVAGE. See ADMIRALTY, III. ERRORS AND APPEALS, 12.

SCHOOL.

1. The courts may by mandamus compel the admission of a pupil unlawfully excluded, and such pupil is not restricted to a statutory remedy by appeal to the county superintendent. *Perkins v. Board of Directors, &c.*, 790, *and note*.

2. Directors have no authority to refuse to allow a pupil to attend until he has paid for damage to school property accidentally committed. *Id.*

SEDUCTION.

1. A father may recover for loss of service of his infant daughter, caused by her seduction, notwithstanding she was at the time in the service of the defendant, if the father still retained the legal right to reclaim her service. *Lavery v. Crooke*, 630.

2. In such case the jury are not confined to the pecuniary loss, but may award punitive damages; and evidence is admissible of defendant's pecuniary condition. *Id.*

3. It is no objection to the maintenance of such action that defendant procured the sexual intercourse by force. *Id.*

SET-OFF.

Items on debit side of an account cannot be relied on as a set-off without allowing the credits or showing fraud or mistake in striking the balance. *Andrews v. Congar*, 328.

SHERIFF. See EXECUTION. SURETY, 4.

1. Liable to execution plaintiff for damage caused by absence of plaintiff's attorney from the sale, and consequent sacrifice of the property caused by erroneous information given by a deputy to the plaintiff's attorney as to the place of sale. *State v. Moore*, 559.

2. It was the duty of the sheriff in such case, upon acquiring knowledge of the facts, to postpone the sale. *Id.*

SHERIFF'S SALE. See GROWING CROPS. PARTNERSHIP, 2.

The doctrine of *caveat emptor* does not apply where there is a mistake made both by the sheriff and the purchaser in selling a tract of land to which defendant had no title. In such case, since the money has gone to extinguish defendant's debt, the purchaser may recover it back from him. *Wilchinski v. Cavender*, 495.

SHIPPING. See ADMIRALTY. INSURANCE, 8. VESSEL.**SLANDER.**

1. In actions for, under the New Jersey statutes, any meaning deemed advisable by the plaintiff may be imputed to the words. *Andrew v. Deshler*, 815.

2. It is sufficient to allege that the words are false and malicious, without

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laying a *scienter*, even when the words may have been part of a privileged communication. *Andrew v. Deshler*, 815.

SPECIFIC PERFORMANCE. See **TRUST**, 1.

1. Will not be decreed of an agreement to convey land for the purpose of defrauding creditors. *Ryan v. Ryan*, 209.

2. Decree for, is a matter of discretion, and will not be granted if claim is suspicious and stale. *Williams v. Williams*, 143.

3. But this discretion is to be exercised in conformity with well recognised principles. *Allen v. Woodruff*, 79.

4. A vendor accepting payments after maturity waives his right to a forfeiture, and if he stands by while the vendee makes improvements, the latter is entitled to performance upon tender of the amount due, even though time was of the essence of the contract, and there has been delay in making the tender. *Id.*

5. If a purchaser of land cannot maintain a bill for specific performance, one to whom he has assigned his contract as indemnity cannot. *Id.*

STARE DECISIS. See **UNITED STATES COURTS**, 9.**STATUTE.** See **CONSTITUTIONAL LAW**, II. **EVIDENCE**, 17, 18. **MUNICIPAL CORPORATION**, 20. **ORDINANCE.** **RAILROADS**, 8.

1. Where the letter is ambiguous, the courts look to the object sought to be accomplished by the legislature. *Howard v. Lacroix*, 423.

2. If the text be ambiguous the caption furnishes the best guide as to such object. *Id.*

3. In the interpretation of the customs laws, the law adopts the meaning given to commercial terms by those engaged in commerce. *Recknagle v. Murphy*, 422.

4. Where a statute of one state is derived from that of another, a decision in the latter state construing it, rendered after the adoption by the former, does not have that authoritative force which it would have had before the adoption. *Griswold v. Seligman*, 422.

STREAM. See **CONSTITUTIONAL LAW**, 3. **WATERS AND WATERCOURSES.****STREET.** See **CRIMINAL LAW**, 8. **MUNICIPAL CORPORATION**, 17-19, 26. **NEGLIGENCE**, 4, 7, 8, 19. **NUISANCE**, 12.**SUBPCENA.** See **TELEGRAPH**, 2.**SUBROGATION.** See **EQUITY**, 8. **PARTNERSHIP**, 22-24. **SURETY**, 2.

Ward entitled to benefit of securities given by the guardian to his sureties to secure them. *Morrill v. Morrill*, 764.

SUNDAY. See **REPLEVIN**, 3.

1. Extent to which contract made on Sunday shall be deemed invalid. *Note to Kinney v. McDermott*, 740.

2. In a suit on a foreign note made on Sunday, the foreign statute invalidating it must be proved. It is not void at common law. *O'Rourke v. O'Rourke*, 495.

3. Whether work done on Sunday is a work of necessity or charity is purely a question of law. *Allen v. Duffie*, 423.

4. But even if submitted to a jury, their verdict may be allowed to stand if in accordance with the law. *Id.*

5. Raising subscriptions from a congregation to pay off a church debt or purchase a house of worship is a work of charity. *Id.*

6. Signing and acceptance of order on Sunday, in order to enable a party about to leave to pay a claim for labor, is not a work of necessity and is invalid. *Mace v. Putnam*, 359.

7. Publication of a city ordinance upon Sunday is not a valid compliance with a law requiring publication. *Ormsby v. Louisville*, 269.

8. Where publication is required for a certain period, the intervening Sundays will be counted, although no publication be made on them. *Id.*

9. Where a land contract was delivered on a week day, the mere fact that it was dated on Sunday, is immaterial. *Lamore v. Frisbie*, 215.

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10. Payments made on Sunday and allowed on a final accounting, will not avoid the contract. *Lamore v. Frisbie*, 215.

SURETY. See GUARANTY. LIMITATIONS, STATUTE OF, 5. OFFICER, 3, 4. VESSEL, 5, 13.

1. Is liable on a bond, although signed only on condition that a specific co-surety should be procured, if he had delivered it to the principal with nothing on its face to suggest the condition. *Brown v. Judge of Probate*, 283.

2. Securities taken by sureties for their indemnity, inure to the benefit of the creditor. *Thornton v. Bank*, 215.

3. An unauthorized extension of time by a bank, in which a note has been placed for collection, will not discharge the surety. *Prather v. Gammon*, 496.

4. Judgment of amercement against a sheriff, is only *prima facie*, and not conclusive against his sureties. *Fay v. Edmiston*, 495.

5. In an action against the sureties, the question is not whether the judgment was obtained by fraud, but whether upon the facts there was any liability. *Id.*

6. Judgment against principal is not binding upon or evidence against the surety. *Ex parte Young*, 815.

7. Where the sureties on a treasurer's bond are bound during his continuance in office, "whether of the present term for which he has been elected, or of any succeeding term," their liability continues during the succeeding terms. *Peoples' B. & L. Association v. Wroth*, 703.

8. The acquiescence of the executive officers of a building association, when promises to pay are given by members to the treasurer in lieu of cash, will not discharge the treasurer's sureties from liability for loss from such credit. *Id.*

9. Where fines and dues are not actually received by the treasurer, the damage sustained thereby is the rule for making the assessment. *Id.*

TAX AND TAXATION. See CONSTITUTIONAL LAW, 9. EQUITY, 9. HUSBAND AND WIFE, 17. MANDAMUS, 1. MUNICIPAL CORPORATION, 1, 5-8, 23, 28.

1. Illegal taxes paid through a mutual mistake as to their legality, may be recovered back. *City of Louisville v. Anderson*, 687, and note.

2. Equity will restrain the tax-collector where the owner of the land is not the tax-debtor, and the property is not that on which the tax was laid. *Seeley v. Westport*, 143.

3. Payment of illegal tax is not voluntary, and the money may be recovered back at law. *Id.*

4. Interest is not allowable on taxes by way of damages, and a party claiming a penalty must show a compliance with all the requirements of the law. *Ormsby v. Louisville*, 269.

5. Description of property upon a tax list need not be as full or precise as in a deed. *Id.*

6. The date of the recording of the tax deed, is the time at which the Statute of Limitations begins to run in tax title cases; and this time is not changed by the fact, that the holder of the tax sale certificate did not obtain and record his deed on the day he was entitled to it. *Estes v. Stebbins*, 496.

7. The provision requiring fifty per cent. interest upon a redemption from a tax sale, is not unconstitutional. *Id.*

8. In New Jersey, on *certiorari* brought in aid of an ejectment to review the proceedings on which a tax title is founded, the recitals in the certificate of sale are *prima facie* evidence of the facts recited. *Woodbridge v. State*, 630.

9. The facts that the tax was duly assessed, and was a lien on the lands; and that the successive steps which led to the sale were regularly taken, if they do not appear by the proceedings returned with the writ, must be shown by the recitals in the certificate of sale or by proof *aliunde*. *Id.*

10. The validity of the title derived from a tax sale, depends upon a strict compliance with the directions of the statute. The *onus probandi* is upon the purchaser at such a sale. *Id.*

11. Where the statute gives the power to sell to a particular officer, it must appear that the sale was made by him, and at the time and place at which it was advertised. *Id.*

12. REMEDIES OF ILLEGAL TAXATION, 1.

TELEGRAPH. See **EVIDENCE**, 13-15.

1. Telegraphic messages are not privileged communications, and the officers of the telegraph company may be compelled to produce them before the grand jury. *Ex parte Brown*, 423.

2. A *subpoena duces tecum*, to compel the production of telegrams, should give a reasonably accurate description of them. *Id.*

3. A *subpoena* merely giving the names of a number of persons, and calling for telegrams between them within fifteen months, held not sufficiently certain. *Id.*

TENANT IN COMMON. See **WAREHOUSEMAN**, 3.

1. The share of a tenant in common, who has by his acts held his co-tenant out as sole owner, is liable to its proportion of the costs of improvements made by such co-tenant. *Baird v. Jackson*, 424.

2. A lien of one tenant in common on the share of his co-tenant for improvements placed on the common property, is subject to a deed of trust given by the former of his share. *Id.*

TENANT FOR LIFE.

As regards timber blown down by storm, is entitled to the corpus of the proceeds of the part sold for firewood, and to the interest on the proceeds of that sold for timber. *Stonebraker v. Zollkoffer*, 389, and note.

TORT. See **TROVER**.

1. One cannot be liable as for the ratification of a tort that was not committed in his interest. *Smith v. Loco*, 215.

2. In case, for the neglect of a statutory duty, the plaintiff must show that the duty was imposed for his benefit. *Smith v. Tripp*, 703.

TRADE-MARK.

1. Words in common use merely descriptive of the character, composition or quality of the article, cannot be appropriated as a trade-mark. *Marshall v. Pinkham*, 560.

2. The office of a trade-mark is to point out origin or ownership, or to designate the dealer's place of business. *Id.*

3. The ground upon which actions for infringement of trade-mark are maintained is that the law will not allow one person to sell his own goods as the goods of another. *Id.*

4. The fact that an article prepared according to a certain recipe, but not protected by a patent, has for some time been made and sold only by a certain manufacturer, does not render it unlawful for any other person to manufacture it. *Id.*

5. The proper name of the manufacturer cannot be made a trade-mark so as to prevent any other manufacturer of the same name from affixing such name to a similar article made and sold by him. *Id.*

6. In action for injunction, if fac similes of the two trade-marks are annexed to the complaint, it will not be held, on demurrer, that the one is not sufficiently similar to the other to mislead, unless the dissimilarity is so marked as to leave no doubt in the mind of the court. *Liedersdorf v. Flint*, 143.

7. Plaintiff may, without misjoinder, ask for an accounting as to profits, and for damages. *Id.*

8. **TRADE-MARKS**, 304.

TRESPASS. See **EXECUTION**, 1, 2. **LANDLORD AND TENANT**, 11.

1. Can be maintained for breaking and entering a burial lot. *Smith v. Thompson*, 703.

2. There being evidence of malice, the plaintiff held entitled to punitive damages. *Id.*

3. Under a contract transferring all the pine trees the vendee "may choose to take," the latter agreeing to pay a certain sum therefor, the vendee could not, until he had cut the pine, bring trespass against a grantee of the vendor for cutting timber. *Pfister v. Bird*, 496.

4. It is the abuse of some special and particular authority given by law, and not of a legal right common to all, which will make a man a trespasser *ab initio*. *Turner v. Footman*, 283.

5. Where the legal right of self-defence has been exceeded, the party so offending is liable only for the excess of force. *Id.*

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6. In an action for assault, where defendant sets up an unlawful imprisonment by plaintiff, the jury should be instructed not only as to the measure of damages in case the imprisonment was not unlawful, but also as to such measure if the imprisonment was unlawful but the defendant used improper force in freeing himself. *Turner v. Footman*, 283.

7. The right to such instructions is not waived by a failure to ask for them. *Id.*

TRIAL. See CRIMINAL LAW, 14. EVIDENCE. NEW TRIAL. WITNESS, 2.

1. Agreement at the trial to amend the issue and try on the merits, merely waives exceptions as to matters of form, and does not in any other respect affect the legal rights. *Banghart v. Flummerfelt*, 815.

2. Where a case has been submitted without a jury, and at the close of the testimony plaintiff obtains leave to amend his declaration, it is within the discretion of the court to grant or deny a motion by defendant to vacate the submission. *Bamberger v. Terry*, 496.

TROVER. See ASSUMPSIT, 5. REPLEVIN, 8.

CONVERTIBLE PROPERTY, 769.

TRUST AND TRUSTEE. See ACTION, 7-10. BILLS AND NOTES, 16. EQUITY, 3. GIFT.

1. A trust to sell or improve lands, to invest the proceeds, to collect income, to pay charges, to pay over net income and divide the estate, vests a fee-simple title in the trustees, which descends to the heir-at-law of the survivor, and his contract to sell lands of the estate may be specifically enforced. *Zabriskie v. Morris & Essex Railroad Co.*, 284.

2. A trust of a mortgage-debt may be created by spoken words and proved by parol. *Danser v. Warwick*, 283.

3. Even after settlement of trustee's accounts and surrender of his bond, assumpsit may be maintained against him by the *cestui que trust* to correct the accounts and recover a balance due. *Howard v. Patterson*, 815.

ULTRA VIRES. See CORPORATION, 11.

UNITED STATES. See BANKRUPTCY, 6. PAYMENT, 2, 3.

Where an injury to a vessel in war service results from disobedience by the master of the orders of the commanding military officer, the government is not responsible. *White v. United States*, 424.

UNITED STATES COURTS. See ADMIRALTY, 13. ERRORS AND APPEALS, 1-5, 14, 21. EVIDENCE, 28. INSURANCE, 1. REMOVAL OF CAUSES.

1. The judicial power of the United States extends to suits prosecuted by a state against an individual, in which the latter demands nothing from the former, but only seeks the protection of the Constitution and laws of the United States against the claim or demand of the state. *New Orleans, M. & T. Railroad Co. v. Mississippi*, 144.

2. A case in law or equity consists of the right of one party as well as of the other, and may properly be said to arise under the Constitution or a law of the United States whenever its correct decision depends on the construction of either. *Id.*

3. Cases arising under the laws of the United States are such as grow out of the legislation of Congress, whether they constitute the claim or defence of the party by whom they are asserted. *Id.*

4. Except in the cases of which the Supreme Court is given original jurisdiction, the judicial power of the United States is to be exercised in its original or appellate form, or both, as the wisdom of Congress may direct. *Id.*

5. When a question to which the judicial power of the union extends forms an ingredient of the original cause, it is within the power of Congress to give the Circuit Courts jurisdiction of that cause, although other questions of fact or of law may be involved in it. *Id.*

6. The prohibition of sect. 739, Revised Statutes, against the bringing of a suit in a Circuit Court, in any other state than that of which defendant is an inhabitant, or in which he is found at the time of serving the writ, applies to an attachment against defendant's property. *Ex parte Des Moines & Minneapolis Railroad Co.*, 631.

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7. The act dividing the district of Iowa into four divisions, and providing that where defendant is not a resident, suit may be brought in any division where his property may be found, applies only to suits which may be properly brought against a non-resident. *Ex parte Des Moines & M. Railroad Co.*, 631.

8. A joint stock company with corporate powers may sue in the federal courts as a citizen of the state creating it, without regard to the citizenship of its individual members. *Fargo v. Louisville, New Albany & Chicago Railroad Co.*, 529, and note.

9. A decision of the state courts as to the invalidity of state bonds under the state constitution, will not be departed from by the federal courts except for imperative reasons. *Florida Cent. Railroad v. Schutte*, 558.

10. Judgment at law on coupons attached to bonds, necessary before federal courts can compel payment by mandamus. *County of Greene v. Daniel*, 215.

11. The jurisdiction of the federal courts in such suit is not ousted because of the existence of a remedy in the state courts. *Id.*

12. An action cannot be maintained in the state courts to set aside a sale of land made under a decree of a federal court, on the ground that such sale was not in accordance with the state statutes. *Moore v. Jeffers*, 209.

13. The question whether the time limited for the use of a franchise has expired is not a federal question, the validity of the grant not being disputed, and no law impairing it being construed. *France v. Missouri*, 208.

14. A motion to advance a case to be heard with another is always denied if resisted, but counsel may be allowed to submit printed arguments in the other case on the questions common to both. *State of Louisiana v. City of New Orleans*, 284.

15. A petition in the United States Supreme Court for rehearing after judgment cannot be filed, except at the term in which the judgment was rendered. *Brooks v. B. & S. Railroad Co.*, 284.

16. In an appeal from a state court to the United States Supreme Court, the latter can only look beyond the federal question involved when that has been decided erroneously, and then only to see whether there are any other issues on which the judgment can be sustained. *McLaughlin v. Fowler*, 359.

17. When the defence to a bond is that it was given under a statute in violation of the federal constitution, and the state court sustains its validity, a writ of error lies to the United States Supreme Court. *Daniels v. Tearney*, 412.

18. Decision of state Supreme Court involving federal question is reviewable by United States Supreme Court, whether such decision be expressed by refusing a writ of error to a judgment of the inferior court, or by dismissing one previously allowed. *Williams v. Bruffry*, 416.

19. If the United States Supreme Court reverses such decision, it may enforce its judgment by directly reversing the judgment of the inferior state court, and entering judgment in favor of the party entitled. *Id.*

USE AND OCCUPATION. See LANDLORD AND TENANT, 2, 4. MENS RE PROFITS.

USURY. See NATIONAL BANK, 1, 4-6.

1. A contract, so far as it is void for usury, cannot be cured by a subsequent repeal of the law. *Woolley v. Alexander*, 704.

2. A penalty for reserving usurious interest in a contract, until enforced, is subject to legislative control, and may be abolished. *Id.*

3. Usury paid on a note, not included in it, nor endorsed on it, may be recovered back, although the note has passed into a judgment. *McDonald v. Smith*, 631.

4. Neglect of the party paying the usury to plead it in offset is no bar to his recovering it in an independent suit. *Id.*

5. Where usury has been paid on a mortgage note, and the mortgage has been foreclosed, and the usury was deducted on the making of the decree, although this was done at the instance of an attaching creditor, while the payer of the usury protested against such deduction, such usury cannot be recovered. *Id.*

6. Sums in excess of legal interest paid for bonus on, and renewal of a loan, constitute usury, and should be credited as payments. *Walter v. Foutz*, 359.

VARIANCE. See NAME, 2.

An attachment recited that a judgment was recovered in February term. The record showed that the verdict was rendered at November term, but that the motion for a new trial was not overruled until February term. *Held*, that there was no variance. *Bank v. Wreckler*, 357.

VENDOR AND VENDEE. See FIXTURE, 6, 7. FRAUDS, STATUTE OF. HUSBAND AND WIFE, 38. SALE. SPECIFIC PERFORMANCE.

1. One may waive by parol a lien on lumber reserved in a conditional deed, to secure the purchase price of the land on which the lumber was cut. *Stone v. Fairbanks*, 704.

2. If he does, he is estopped from setting up title to the lumber against a third party purchasing of one, who had bid it off at a sheriff's sale to satisfy a debt against the grantee. *Id.*

3. The facts, that the lien-holder saw the plaintiff cutting the timber; that he made no objection to it; and that the evidence tended to show that he knew he was cutting on some contract with the grantee, tended to prove a waiver, and should have been submitted to the jury. *Id.*

4. Purchaser having notice of a deed in the chain of title has constructive notice of its contents, and is not protected by the most express representation on the part of the vendor, that it contains nothing affecting the title. *Putman v. Harland*, 816.

5. On an agreement for the sale of land, the purchaser becomes in equity the owner of the land, and the vendor becomes the owner of the purchase-money. *Schmidt v. Opie*, 278.

6. The trustee in a deed of trust to secure a debt, being about to sell the land, the defendant R., who was at that time a minor, agreed with the creditor that if A. would buy at \$300, he would give his note for the balance of the debt, which was done. Afterwards, R. having become of age, A. sold and conveyed the land to him. R.'s note being unpaid, this action was brought to obtain a personal judgment against him, and to subject the land to its payment. *Held*, that it would not lie. *Maupin v. Grady*, 216.

VERDICT. See JURY, 10.

In an action upon an insurance policy, a verdict for the full amount of the policy with six per cent. interest and ten per cent. damages for delay, is sufficiently certain without stating the figures. *Relfe v. Wilson*, 496.

VESSEL. See ADMIRALTY. HUSBAND AND WIFE, 4. INSURANCE, 8.

1. Majority of owners may remove the master whether he be part owner or not, and only a written agreement under Sect. 4250, Rev. Stat. can defeat this power. *In re Schr. Emory*, 68.

2. This power may be exercised without cause and in violation of the master's engagement. *Id.*

3. A contract by part owner for the sale of a sailing right, cannot be enforced either by estoppel or by direct proceedings. *Id.*

4. Part owners of a vessel are entitled to intervene in any proceeding *in rem*. *Mitchell v. Chambers*, 422.

5. Judgments against a vessel and against her managing owner and the surety upon a recognisance for her release, are part of a general adjudication of the liability. *Id.*

6. Part owners will not be regarded as partners, unless it distinctly appears that they are so. *Id.*

7. A vessel master has no authority as such, to find bail for the ship on behalf of the owners. *Id.*

8. The ship's husband cannot, in the absence of special emergency, bind his co-owners by obtaining bail for the vessel's release. *Id.*

9. The assent of the co-owners thereto cannot be implied from mere silence. *Id.*

10. Co-owners are not personally liable on claims incurred before they acquired their interest. *Id.*

11. The necessity for obtaining the release of a vessel does not imply that it was obtained upon conditions binding the owners personally. *Id.*

12. *Semble*, that a ship's husband is not warranted in assuming extraordinary

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powers if he can communicate with the owners by telegraph. *Mitchell v. Chambers*, 422.

13. One who consents to become surety must see that he acts by authority of the principal or his duly authorized agent. *Id.*

14. The interest of a managing owner entitles him to act for himself in obtaining bail, and the surety cannot hold the co-owners liable. *Id.*

VOLUNTARY CONVEYANCE. See **DEBTOR AND CREDITOR**, 1, 11, 15, 18, 19. **HUSBAND AND WIFE**, 23.

VOLUNTARY PAYMENT. See **PAYMENT**. Tax, 1, 3.

WAIVER. See **ASSUMPSIT**, 5. **INSURANCE**, 6. **SPECIFIC PERFORMANCE**, 4. **VENDOR AND VENDEE**, 1.

WAR. See **CONSTITUTIONAL LAW**, 2. **UNITED STATES**.

WAREHOUSEMAN.

1. A warehouseman issuing receipts is not a guarantor of the title of the depositor to the goods. *Mechanics' & Traders' Ins. Co. v. Kiger*, 496.

2. Contract of grain warehouseman is one of bailment and not of sale, although the grain is mixed with other grain and delivery is made from the mass. *Sexton v. Graham*, 216.

3. The owners of such grain are tenants in common of the entire mass with the other owners. *Id.*

4. Where the warehouseman wrongfully ships from grain of depositors stored with his own an amount greater than that remaining in the warehouse, the amount so remaining will be considered as the property of depositors. *Id.*

5. A warehouse-receipt issued by a warehouseman upon his own grain as collateral security merely, is invalid under the Iowa Code. *Id.*

6. Delivery to the holder of such receipt, of the warehouse keys is not a valid delivery of the grain as against a prior purchaser who holds a receipt. *Id.*

WARRANTY. See **COVENANT**, 1. **HUSBAND AND WIFE**, 38. **INSURANCE**, 15. **MORTGAGE**, 1. **SALE**, 10.

1. In suit on note given for a fertilizer, the court charged that if the fertilizer was bought upon plaintiff's representation that it was a valuable fertilizer, and it was worthless as a fertilizer, the plaintiff was not entitled to recover, but that if it was a valuable fertilizer, the plaintiff was entitled to recover. *Held*, that the court sufficiently instructed the jury as to what they must find to constitute a warranty. *Crenshaw v. Lyle*, 360.

2. A representation that a machine is a very good machine, and will do nice work, is not a warranty. *Work v. McConnell*, 283.

WATERS AND WATERCOURSES. See **CANAL**. **CONSTITUTIONAL LAW**, 3. **CONTRACT**, 11.

1. Landowner liable for diverting the sources of a stream flowing from a swamp on his land, if such stream was permanent, but not if the stream flowed only in times of excessive rain or melting snow. *Boynton v. Gilman*, 631.

2. Contract for sale of spring and right to convey water over vendor's land not broken by sale of land by vendor to railroad, and erection of works which drain the water before it reaches the spring. *Brain v. Marfell*, 93.

3. Right of riparian proprietor to underground percolating water. *Id.*, note.

4. The right of a city to use subterranean waters is subject to the restriction that it shall not interfere with the natural surface streams. *City of Emporia v. Soden*, 632.

5. In action against a landholder in a city for injury to adjoining land by overflow of stream, it appeared that the city had constructed sewers emptying into the stream. *Held*, 1. That the defendant was only liable for damage caused by the natural flow. 2. That it made no difference, that the proportion of damage done by the natural flow was difficult of ascertainment. 3. That the defendant and the city were not joint tort-feasors. *Sellick v. Hall*, 80.

6. It being claimed that the city had by legal proceedings taken the whole stream for a public sewer. *Held*, that the question was not as to the regularity of the legal proceedings, but whether the city had taken actual possession and control. *Id.*

WAY. See **INJUNCTION**, 1.

1. Merely using a way, open to, and occupied by the public, has no tendency to prove that the use is adverse. *O'Neil v. Blodgett*, 816.
2. Such use with the public, raises the presumption that it is not adverse. *Id.*
3. The use must not only be open, notorious and continuous; but under a claim of right, brought to the attention of the plaintiff. *Id.*
4. When real estate is divided among heirs by commissioners of the Probate Court, a right of way, of necessity or by implication, may exist over one part to another. *Goodall v. Godfrey*, 816.
5. If such right of way is appurtenant to that portion set out as dower, and not simply appurtenant to the freehold estate of the dowager, it is not extinguished on the death of the widow. *Id.*
6. Distinction, as to a right by implication, between a partition among heirs, and a purchase by a stranger. *Id.*
7. So far as it is a question of necessity, reasonable, not strict, necessity is the test; but such right is determined not on the ground of necessity alone, but by the acts of the parties and in the light of circumstances. *Id.*

WILL. See **HUSBAND AND WIFE**, 28. **LEGACY**. **PARTNERSHIP**, 8.

1. When there exists no reasonable ground for contesting probate, or the litigation is needlessly protracted or expensive, allowance of costs and counsel fees to caveators should be denied. *Mallett v. Bamber*, 360.
2. Certain evidence held insufficient to impeach testator's capacity to make a will. *In re Will of Lewis*, 360.
3. Testator gave to his daughter A. his farm, and provided: "It is further my will, that the said A. reside on the aforesaid farm after my decease, and take proper care of the same. In case they (I mean A. and her husband) should not see proper to move on the same, then I order my executor hereinafter named, to sell the same at public vendue." *Held*, that the estate of A. was a fee-simple, and not defeasible by her non-residence thereon, and that A. having moved on the farm, the power of sale could not be exercised upon her subsequent removal. *Casper v. Walker*, 103.
4. Rights and obligations of devisees to reside on land devised. *Id.*, note.
5. Lands were devised after the death of a devisee for life to such persons as would be her heirs-at-law of lands held by her in fee-simple. The land having been sold under statutory proceedings, the life tenant conveyed her interest in the fund to her children. *Held*, that the will fixed the life tenant's decease as the period for the ascertainment of heirs, and that the children were not entitled to immediate payment. *Bartles's Petition*, 98.
6. Apportionment of an annuity charged by will on several parcels of real estate, can be made only by an agreement to which the annuitant is a party. *Perkins v. Emory*, 704.

WITNESS. See **CRIMINAL LAW**, 5, 22. **EVIDENCE**, 7, 27, 30, 31.

1. Cannot be impeached by mere proof that he was once charged with a crime in a judicial proceeding. *McKesson v. Sherman*, 360.
2. Cannot, without leave of the court, be re-examined on a matter as to which he has been previously examined; but the ground of objection must be specifically stated when he is recalled, or his testimony will not be excluded. The rule, however, does not prevent the recalling of a witness in rebuttal. *Osborne v. O'Reilly*, 816.
3. The payer of a negotiable note is not a witness to the fact of a payment, the note having been assigned subsequently, the payee being dead, and suit brought in the name of the assignee. *Farmers' Mutual Ins. Co. v. Wells*, 632.
4. In Vermont, when one party to a contract is dead, and the contract has been assigned, so that the estate or heirs, have no interest in it, the assignee stands upon the proviso of s. 24, c. 36, Gen. Sts. in all cases where the contract is the cause of action, and the survivor cannot testify—otherwise where the contract is a matter collateral to the cause of action. *Id.*